

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6812 OF 2023

SHAMRAO BHAURAO DALAVE

....PETITIONER

V/S

EXECUTIVE ENGINEER

MECHANICAL DIVISION AND ANR

....RESPONDENTS

...

Mr. Kuldeep Nikam i/b Mr. Prasad Avhad for the Petitioner.

Mr. V.S. Nimbalkar, AGP for Respondents/State.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 08, 2024.

P.C.:

1 The challenge in the present Petition is to the order dated 16 April 2022 passed by the Industrial Court, Kolhapur dismissing the Complaint (ULP) No.56 of 2018.

2 The grievance of the Petitioner in his Complaint was with regard to alleged error in recording the date of his initial appointment as 12 November 1988 when the correct date of his first appointment is alleged to be 29 November 1981. Petitioner desires change in the initial date of appointment for the purpose of conferment of benefit of permanency on completion of five years of service as per order dated 6 October 1999 passed by the Industrial Court, Kolhapur.

3 After hearing the learned Counsel appearing for the Petitioner and the learned AGP appearing for the Respondents/State Government, it is

apparent that the Petitioner has been grossly negligent in pursuing his case for regularization of his services. Firstly he voluntarily disclosed the date of his first engagement as 12 November 1988 in the Complaint filed before the Industrial Court in the year 1992. He did not make any attempt to seek correction thereof during pendency of the Complaint which was allowed on 6 October 1999 directing grant of permanency on completion of five years of continuous service and payment of 1/4th of arrears of wages from the date of permanency. Even after passing of order dated 6 October 1999, Petitioner did not take any steps for correction of the date of his initial engagement.

4 On the contrary when the Application IDA No.65 of 2006 was filed by other employees for non-payment of the amount of arrears of wages under section 33C(2) of the Industrial Disputes Act, 1947 (**ID Act**), the Petitioner joined them, rather than filing a separate application for seeking correction in the date of his initial appointment. He kept on prosecuting the said application filed under provisions of section 33C (2) of the ID Act for 10 long years which was disposed of by order dated 1 April 2016 directing that the claim of the Petitioner could not be considered in view of the dispute about his date of his appointment. Two years later, the Petitioner filed Complaint (ULP) No.56 of 2018 for correction in the date of his initial appointment. Alongwith his Complaint, he did not produce any concrete evidence demonstrating the date of his initial appointment as 29 November 1981.

5 The learned Counsel appearing for the Petitioner has relied upon certificate issued by the Deputy Engineer, Warana Mechanical Sub Division certifying that the Petitioner was working as Helper/Heavy Vehicle Driver during 29 November 1981 to 20 May 1985. He would however candidly admit that the said document was not produced before the Industrial Court. Thus the Industrial Court did not have any concrete material before it for the purpose of holding that the date of initial engagement of the Petitioner was 29 November 1981. Petitioner cannot be permitted to prove his initial engagement directly before this Court in a Petition filed under provisions of Article 227 of the Constitution of India.

6 Mr. Nikam has relied upon file noting of the Mechanical Division, Amaravati to demonstrate that the grievance with regard to incorrect date of initial engagement was raised before the authorities in the year 2001 itself. In my view, once the Petitioner disclosed the date of his initial engagement as 12 November 1988 and secured an order for grant of permanency benefit on expiry of period of five years thereafter. If he intended any change in the date of initial appointment, he ought to have moved the Industrial Court by filing appropriate proceedings immediately after 6 October 1999. Merely pursuing the matter with the Respondent authority was not sufficient. Such an application was filed by him before the Industrial Court directly in the year 2018. Considering the age disclosed in the Petition, the Petitioner appears to have retired from the services. As observed above, the Industrial Court did not have the

benefit of perusing the document allegedly evidencing Petitioner's initial date of appointment, which is produced directly before this Court. Therefore an order of remand to the Industrial Court would be required if that document is to be considered. In my view, remanding the case for fresh hearing at this distant point of time after Petitioner's retirement is not warranted. It is therefore too late in a day to effect any change with regard to the date of his initial engagement. Petitioner is already conferred the benefit of permanency on completion of five years of service from 12 November 1988. I therefore, do not find any reason to interfere in the order passed by the Industrial Court. The Writ Petition, being devoid of merits, is rejected.

(SANDEEP V. MARNE, J.)

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signed by
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RAJALINGAM
KATKAM
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