



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 2304 of 2019

Anil Gulabrao Warghat,
Aged about 45 years,
R/o Tahasil – Karanja Lad,
Dist. Washim.

... Petitioner

- Versus -

- (1) Sub Divisional Engineer, Irrigation
Sub Division, Karanja,
Near Court Bldg.
Tah. Karanja, Dist. Washim.
- (2) Executive Engineer,
Minor Irrigation Division, Civil Lines,
Washim.
- (3) Superintending Engineer,
Washim Irrigation Circle,
Civil Lines, Washim.
- (4) State of Maharashtra,
Through it's Secretary,
Water Resource Department,
Mantralaya, Mumbai-400 032.

... Respondents

with

Writ Petition No. 4553 of 2021

- (1) Superintending Engineer,
Washim Irrigation Circle,
Civil Lines, Washim.
- (2) Executive Engineer,
Minor Irrigation Department,
Civil Lines, Washim,
Tahsil & Distt.- Washim.

(3) Sub Divisional Engineer,
Sub Division, Irrigation Department,
Near Civil Court, Karanja,
Tahsil - Karanja, District - Washim.

... Petitioners

- Versus -

(1) Anil Gulabrao Warghat,
Aged about 48 years,
Occu.- Daily Wages, Casual,
Temporary employee, resident
of Irrigation Colony, Darwah
Road, Near Water Tank,
Karanja (Lad), Washim,
District Washim.

(2) State of Maharashtra,
Department of Irrigation,
through it's Secretary (Labour),
Labour Establishment, 2nd Floor,
Mantralaya, Mumbai-32.

... Respondents

Mr. N. R. Saboo, Advocate for the petitioner in Writ Petition No. 2304/2019 and for respondent no. 1 in Writ Petition No. 4553/2021
Mrs. U. A. Patil, Advocate for respondent nos. 1 to 3 in Writ Petition No. 2304/2019 and for petitioners in Writ Petition No. 4553/2021
Ms. K. P. Marpakwar, AGP for respondent no. 4 in Writ Petition No. 2304/2019 and for respondent no. 2 in Writ Petition No. 4553/2021

CORAM : ANIL L. PANSARE, J.

DATED : 26-09-2024

COMMON JUDGMENT

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

3. Employee – Anil Gulabrao Warghat and the employer Irrigation Department are both aggrieved by the judgment and order dated 31-1-2019 passed by the Member, Industrial Court, Akola in Complaint ULP No. 3/2013.

4. The employee was working on daily rated establishment basis with the Irrigation Department with effect from 21-12-1996. As per Kalelkar Award, the services of daily rated establishment are required to be brought on C.R.T. The Industrial Court has held that the employee was entitled as regular workman on establishment of the Department in terms of the Kalelkar Award. The Industrial Court found that the employee has completed 5 years service on 21-12-2001 and was eligible for regular workman. The Industrial Court, however, noted that though he was so entitled, he filed complaint on 3-1-2013 and thus, will not be entitled for salary/wages of the regular workman for this period. The Industrial Court directed the Irrigation Department to convert the employee's services as regular workman on establishment with effect from 21-12-2001. However, the Industrial Court directed to pay difference in the salary/wages with effect from 3-1-2013. The employee is aggrieved by the later part of the direction.

5. Learned counsel for the employee has rightly argued that it was the duty of the Department to convert the employee as regular

workman on establishment in terms of Kalelkar Award. He further submits that the employee was given assurance from time to time of making him regular workman and accordingly, he waited for the benefit.

6. He submits that the Department has, in the year 2004, forwarded proposal to the State Government to convert him as regular workman on establishment with effect from 21-12-2001. However, the State Government refused the request on the ground that proposal was defective. It appears that the Department had forwarded proposal of the employee treating him to be Khansama when he was working as daily rated workman and was paid rate of Majoor.

7. He further submits that another attempt was made by the Department in the year 2007 by sending revised proposal. The same was also rejected. Thereafter, the Department sought an undertaking from employee for waiving his right to claim arrears which according to the employee was an unfair labour practice. Ultimately, he was compelled to submit such undertaking which he did on 1-1-2010. The department, however, did not grant benefit of regular workman on establishment and, therefore, on 3-1-2012, he submitted representation to return back the undertaking of waiving claim of arrears. Thereafter he approached the Industrial Court.

8. Learned counsel for the employer though made an attempt to pursue the challenge to the impugned judgment but failed to show that Kalelkar Award was not applicable to the Irrigation Department or that the employee did not work on daily rated establishment. Rather, the employer has not disputed that it had forwarded two proposals to absorb the employee on regular establishment to the State Government which came to be rejected.

9. In my view, the Department will have to carry the blame for sending a defective proposal for absorption in as much as knowing fully well that an employee was not trained Khansama, the proposal was sent to absorb him as Khansama. Had the proposal been sent in terms of Kalelkar Award, there appears no reason why should employee be not absorbed as regular workman, particularly when similarly placed employees were extended such benefits.

10. On the point of the difference of arrears of salary/wages with effect from 21-12-2001, I find it difficult to attribute negligence to the employee for approaching the Industrial Court belatedly. Firstly, it was duty of the Department to extend such benefit from the said date in terms of Kalelkar Award. Secondly, employee was given assurances by submitting proposal which was rejected for the fault attributable to the Department.

11. Further, the Department obtained undertaking from the employee in the year 2010 to waive arrears of pay despite he being entitled. Most importantly, in spite of giving such undertaking, the Department failed to give employee benefit of regular workman on establishment. Ultimately, employee was compelled to file complaint.

12. In such circumstances, one cannot blame employee of delay and latches. The Industrial Court has, without any valid reason, rejected the employee's legitimate claim of salary/wages of regular workman with effect from 21-12-2001 and granted benefit with effect from 3-1-2013. This order, being contrary to the legitimate expectation of the employee and also for the reasons stated herein above, is liable to be quashed and set aside. Resultantly, following order is passed.

ORDER

- (a) Writ Petition No. 2304/2019 is allowed.
- (b) Writ Petition No. 4553/2021 is dismissed.
- (c) The Irrigation Department is hereby directed to pay difference of salary of a regular workman to employee - Anil Gulabrao Warghat with effect from 21-12-2001. The judgment and order dated 31-1-2019

passed by the Industrial Court, Akola in Complaint ULP No. 3/2013 stands modified to that extent. Rest of the order is kept intact.

(d) The Sub Divisional Engineer, Irrigation Sub Division, Karanja, District Washim and Executive Engineer, Minor Irrigation Division, Washim shall submit proposal for grant of difference of salary against regular workman/C.R.T. employee for the period from 21-12-2001 onwards within six weeks from today. The respondent no. 4 – State of Maharashtra through Water Resource Department shall thereafter release the arrears of salary within eight weeks.

(e) The writ petitions are disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

wasnik