

**(2014) 03 BOM CK 0010**

**In the Bombay High Court**

**Case No : Writ Petition No. 1680 of 2001**

Bhausahab Rajaram Dhanwate

APPELLANT

Vs

Mula-Pravara Electric Co-operative Society Ltd.

RESPONDENT

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**Date of Decision : 06-03-2014**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F 25G 25H

**Citation :** (2015) 1 ESC 197 : (2014) 143 FLR 185 : (2014) 2 LLN 94 : (2014) LLR 636

**Hon'ble Judges :** Ravindra V. Ghuge, J

**Bench :** Single Bench

**Advocate :** P.V. Barde, for the Appellant; A.V. Hon H/f Mr. V.D. Hon, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Ravindra V. Ghuge, J.—By order dated 01/07/2002, this Court, after hearing the learned Advocates for the respective sides, admitted the petition and declined interim relief. Mr. Barde, learned Advocate for the petitioner has submitted the facts of the case in brief and which are as follows:-

(a) The petitioner, who is about 55 years of age today, joined employment of the respondent as a Labourer on 01/04/1977.

(b) He was orally terminated on 30/04/1978.

(c) Provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 were not complied with by the respondent.

(d) The petitioner raised an industrial dispute on 13/03/1989.

(e) Since there was no settlement between the parties, the matter was referred to the Labour Court at Ahmednagar and was registered as Ref. I.D.A. No. 66/1990.

(f) By an award dated 20/05/1995, the reference was partly allowed and the Reference Court granted reinstatement to the petitioner without continuity and without back wages.

(g) Unsustainable reasons have been adduced by the Labour Court in paragraph No. 19 of the Award.

(h) When the termination was held to be illegal and unsustainable, the Labour Court should have granted entire back wages since the petitioner was unemployed from the date of termination.

(i) The impugned award, therefore, deserves to be upheld only to the extent of the order of reinstatement. By allowing this petition, continuity of service and full back wages deserve to be granted.

2. Mr. A.V. Hon alongwith Mr. V.D. Hon has vehemently submitted as under:-

(a) The petitioner was engaged as a "Casual Labourer" as and when work was available and since he did not complete 240 days in the continuous employment of the respondent, he should not have been granted reinstatement.

(b) However, the respondent reinstated the petitioner pursuant to the award dated 20/05/1995.

(c) An industrial dispute was raised by the petitioner belatedly after about 11 years and therefore it was a stale dispute.

(d) The oral evidence of the petitioner was recorded on 17/09/1994 and he has nowhere stated that he was continuously unemployed after his termination and that he made several efforts to secure employment, but in vain.

(e) Since the petitioner has not proved his continued unemployment after termination and that he could not secure employment despite many attempts, he cannot be said to be entitled for continuity of service and back wages.

(f) He, therefore, prayed that the petition be dismissed.

3. Both the learned Advocates, to a query put by the Court, submitted that the license of the respondent in electricity distribution is no longer subsisting and though the Company may be alive on paper, there is no activity in the said establishment. Mr. Barde submits that he has little knowledge about the union of workers litigating against the respondent after closing down of its activity.

4. The issue, therefore, for my consideration is as to whether the petitioner was entitled to continuity in service and full back wages. It is an undisputed position that an industrial dispute was raised after a passage of about 11 years. The said passage of time was at the behest of the petitioner. The petitioner, having spent 11 years in slumber, cannot now take an advantage of the said passage of time to claim continuity in service and full back wages for the said period as well. In my view, the Labour Court, Ahmednagar has rightly deprived the petitioner of continuity of service, more so, in view of the fact that he had put in only one

year in the employment of the respondent.

5. So far as the claim for full back wages by the petitioner is concerned, for the same reasons noted above, he needs to be deprived of the back wages for the said period of 11 years. Though there is no limitation provided under The Industrial Disputes Act, 1947 for raising an industrial dispute, no litigant can be allowed the luxury of keeping silent over a long duration and upon succeeding in litigation, claim advantage of the said duration. The law applicable to cases of delay will squarely apply to such cases, by depriving the said employee of back wages.

6. The petitioner could have lead oral and documentary evidence to establish the fact that he had made several attempts for securing employment after his termination. Efforts put in to secure employment can be considered as an important factor to support the case of the employee for seeking back wages. Absence of evidence on this count cannot entitle a workman to claim back wages.

7. Mr. Barde has relied upon the judgment of this Court in the case of Mahanagar Telephone Nigam Ltd. Vs. Deepak Sadashiv Shrikande and Others, . He contends that the ratio laid down in the said judgment is that full back wages may be denied in the case of a belated claim, but back wages can be granted from the date of raising the industrial dispute till the award of the Court and reinstatement of the employee.

8. From the said Mahanagar Telephone Judgment (supra), I am unable to gather as to whether the workman had brought evidence on record to prove his failure to secure employment and that he was not gainfully employed till the date of the recording of his evidence.

9. The Hon'ble Supreme Court in the case of Babu Lal Vs. Haryana State Agricultural Marketing Board, reported at 2009 LLR 936, in paragraph No. 9, held as under:-

A reading of the aforesaid decision of this Court would show that the authorities are vested with power to decide whether an employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. This decision also clearly suggests that there is no inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings, he should be automatically entitled to salary including all benefits for the intervening period. This decision of this Court would also show that where the acquittal of an employee in a criminal proceeding was on benefit of doubt, the employer has a right to decide whether or not such an employee deserves any salary for the intervening period.

10. In the instant case, there is no evidence on record so as to suggest that the petitioner workman was not gainfully employed and suffered total unemployment despite efforts to secure employment. In these circumstances, the said ratio, relied upon by Mr. Barde would be of no assistance to him. In this view of the

matter, the petition is devoid of merit and stands dismissed. Rule is, therefore, discharged. No order as to costs.