
(2019) 05 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 362 Of 2003

State Of Maharashtra And Ors	Vs	APPELLANT
Dashrath Mhatarji Hivarale		RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:

Citation : (2019) 05 BOM CK 0026

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : S.M. Ganachari, A.S. Shelke

Final Decision : Disposed Off

Judgement

Ravindra V. Ghuge, J

1. The petitioner/State and the Forest Department are aggrieved by the judgment and award dated 30/09/2002 delivered by the Labour Court, Aurangabad vide which Ref.(IDA) no.209/1989 was allowed and by setting aside the termination of the respondent/workman dated 01/04/1988, he was granted reinstatement with continuity and full back wages.
2. This Court, while admitting the petition, has stayed the direction with regard to payment of back wages.
3. I have heard the learned AGP on behalf of the petitioners and the learned Advocate on behalf of the respondent. With their assistance, I have gone through the petition paper book and the record available.
4. In similar set of facts, this Court has delivered a judgment on 06/05/2019 in WP Nos.2182/1999 and 2183/1999.
5. It is undisputed that the respondent proved before the Labour Court that he was working from 01/01/1984 upto 01/04/1988 as a "Watchman" with the Range Forest Officer, Khultabad and its nurseries including its plantation at Palaswadi.

These conclusions have been drawn by the Labour Court on the basis of the oral and documentary evidence. In so far as the back wages are concerned, this Court had granted stay to the direction for payment of back wages.

6. Learned Advocate for the respondent submits that he has no instructions as to whether the respondent has been reinstated in employment pursuant to the impugned award. The learned AGP is also not aware as to whether he has been reinstated. The learned Advocate for the respondent, however, submits that when this petition was heard in 2003, he was not in employment.

7. In the cases, which this Court has decided on 06/05/2019, 2 views have been taken. Firstly, that in cases wherein such daily rated watchmen had been reinstated and were working during the pendency of these petitions, this Court has directed the competent authority of the petitioners to decide the claims of such workmen for regularization in order to curb further litigation. In cases where some of such daily rated watchmen were not in employment for a long time and have put in short tenures in service, compensation @ Rs.50,000/- per year of service as a daily rated watchman, was granted in the light of the Law laid down by the Hon'ble Apex Court in the matters of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009], Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], BSNL Vs. Man Singh [(2012) 1 SCC 558] and Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].

8. This petition is taken up in a special drive. After considering the submissions of the parties and the extensive analysis of the oral and documentary evidence by the Labour Court in an award running into 24 pages, I do not find any reason to brand the findings of the Labour Court as being perverse or erroneous. Merely because a different view is possible, would not permit this Court to cause an interference in the impugned award.

9. In view of the above, an equitable order can be passed. This petition is, therefore, partly allowed with the following directions :-

[a] If the respondent has been reinstated in service by the petitioners pursuant to the judgment of the Labour Court, he would be entitled for notional continuity of service from 01/01/1984 till his future date of superannuation for the purposes of calculating his qualifying service for pensionary benefits. He would not be entitled for back wages from 01/04/1988 till the date of his reinstatement by applying the principle of "no work-no wages". He would also not be entitled for gratuity for the period 01/04/1988 till the date of his reinstatement and would be entitled for gratuity only for the period 01/01/1984 to 01/04/1988 and from the date of his reinstatement till the future date of his superannuation.

[b] In view of the above contingency, the petitioners would forward the proposal of the respondent alongwith similarly situated daily rated watchmen, for regularization to the appropriate authorities. Such proposal shall be forwarded

within 2 months from today and the same shall be considered and decided within 4 months from the date of receipt of such proposal. Needless to state, these proposals would be considered by the petitioners in the light of the 2 Government Resolutions dated 31/01/1996 and 16/10/2012.

[c] In case this respondent has not been reinstated in service pursuant to the impugned award, it would mean that he has put in 4 years and 3 months in employment from 01/01/1984 to 01/04/1988. He would be out of employment for 31 years till today. Therefore, the Law laid down by the Hon'ble Apex Court in the above referred 4 cases would be applicable to the case of the respondent. In this situation, the petitioners shall deposit an amount of Rs.2,15,000/- in this Court towards quantified compensation, on or before 31/07/2019, failing which, the said amount would carry interest @ 6% p.a. from the date of the award till the amount is deposited and in which case, the interest component shall be paid from the salary account of the Divisional Forest Officer and the said interest amount would not be paid from the State exchequer.

[d] In the above contingency, after the amount is deposited, the respondent would be at liberty to withdraw the said amount within 90 days, from the date of depositing of the amount, by tendering an application with a recent photograph and identity proof, duly identified by the learned Advocate. If the amount is not withdrawn within 90 days, the same shall stand donated for the treatment of poor patients to the Ghati Hospital and the Nazir Department shall forward the said amount to the said dispensary.

10. Rule is made partly absolute in the above terms.

11. Needless to state, in the event any of these litigating sides lay their hands on any recent information as regards this service matter, they would be at liberty to bring the same to the notice of this Court by preferring a civil application in this disposed off writ petition.