
(2015) 07 BOM CK 0224

In the Bombay High Court

Case No : Writ Petition Nos. 5430, 5432, 5433 and 5434 of 1995

The Executive Engineer, Medium Project Division Jalgaon and
Others

APPELLANT

Vs

Pundlik Sitaram Tayade and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 25(F), 25(G)

Citation : (2015) 5 ABR 347 : (2015) 6 ALLMR 898 : (2016) 148 FLR 892 :
(2015) LabIC 3637 : (2016) 1 MhLj 62

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : S.D. Shelke h/f D.R. Shelke, Spl. Counsel and Y.M. Kshirsagar, AGP,
for the Appellant; A.S. Shelke, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. All these petitions have been admitted by order dated 06/12/1995. An ad-interim stay was granted to the back wages. The statement of the petitioners was recorded that the respondents were already reinstated in service by the petitioners.

3. Since the petitioner is the same in these 4 petitions and an identical question has been raised by the petitioners, I have heard these 4 petitions together.

4. Mr. D.R. Shelke, learned Advocate initially sought an adjournment which I have declined in the light of the order dated 13/3/2015 passed in C.A. Nos. 2904/2015, 2911/2015, 2912/2015 and 2924/2015.

5. The petitioners have strenuously criticized the impugned judgment dated 02/11/1993 delivered by the Labour Court in Ref. (IDA) No. 30/1991, 19/1989, 44/1989 and 16/1989 respectively.

6. He submits that the burden of proving 240 days in continuous employment is cast upon the workmen. They have failed to establish continuous employment. They were engaged as unskilled daily rated workers for the construction of a dam on the river "Mor" commonly referred to as the "Mor dam". The construction of the dam is stopped in May 1987 and therefore the respondent workmen were discontinued from 01/06/1987.

7. He further submits that the impugned award is unsustainable since it is based on assumptions and presumptions. He further assails the award on the ground that the workmen should have been deprived of the back wages by applying the principle of "No work - No wages". Unnecessary weightage has been given to Section 25(F) and 25(G) of the Industrial Disputes Act, 1947 (For Short, I.D. Act). Non-compliance of Section 25(G) of the I.D. Act cannot be established merely by making allegations.

8. He further asserts that the petitioners are State instrumentalities and engagement of daily wagers involves public policy. Grant of 70% and 100% back wages respectively amounts to burdening the State exchequer. The respondents are not entitled to any back wages in as much as they do not deserve reinstatement in service with continuity. He, therefore, prays for the dismissal of these petitions and for imposition of costs.

9. Mr. A.S. Shelke, learned Advocate appearing on behalf of all the respondents workmen draws my attention to the observations of the Labour Court. He submits that all the workmen led evidence and were cross examined by the petitioners. The petitioners led evidence through one witness. An attendance chart was produced by the petitioners on record which indicated that the petitioners had introduced artificial breaks in the months of April and May 1986, October 1986, May 1987 and June 1987. Year wise attendance was produced by the petitioners for the periods 1977-1980 and 1985-1987. The petitioners deliberately suppressed the attendance record for the years 1981 to 1984, which has led the Labour Court to draw an adverse inference.

10. The Labour Court also took cognizance of the fact that the seniority list was not exhibited by the Division Office in relation to the "Mor dam". The witness of the petitioners pleaded ignorance as regards the seniority list as well as whether the respondents were junior most persons to be disengaged. He further indicates that the Labour Court arrived at a finding on facts that no retrenchment compensation was paid to the respondents despite having worked continuously and which is admitted even today.

11. The Labour Court took cognizance of the admissions that the respondents were orally terminated. Information as regards whether juniors have been retained in violation of Section 25(G) of the I.D. Act was suppressed from the Labour Court. He, therefore, submits that a finding on facts cannot be interfered with even by this Court in its writ of certiorari jurisdiction or its supervisory jurisdiction which is akin to the revisional jurisdiction and cannot be equated with

appeal jurisdiction.

12. To the extent of the back wages that have been granted, the respondents have strenuously contended that the Labour Court should have awarded 100% back wages. Some have been deprived of 30%, which was unfair. He, however, frankly states that the concerned respondents did not challenge the impugned award to the extent of deprivation of 30% of the back wages since they desire to bring the litigation to an end.

13. Mr. A.S. Shelke further draws my attention to the developments which have occurred in the interregnum meaning thereby after the institution of these petitions till this date. He has placed on record a compilation containing the Government Resolution dated 05/07/2001 and certain records pertaining to the petitioners vi-a-vis the respondent workmen.

14. Certain office orders are also placed on record. Copy of the said compilation has been handed over to the learned Advocate for the petitioners.

15. I have taken on record the compilation submitted by Mr. A.S. Shelke and the same (21 pages) has been marked as Exhibit X for identification.

16. He further makes a statement with the request that the same be recorded. He submits that clause 4 of the G.R. dated 05/07/2001 enables the petitioners to induct the daily wagers on C.R.T.E and thereafter the difference in wages can be paid in 10 equated installments. Each installment is to be paid in each year meaning thereby that these are 10 equated yearly installments. The first installment was payable in the year 2001-2002. Portion was to be allocated to the provident fund accordingly.

17. He then draws my attention to page No. 3 of the compilation wherein the names of the petitioners are mentioned at Sr.Nos.6, 13, 7 and 5 respectively. Their dates of initial joining are also mentioned as 01/03/1985, 01/02/1983, 01/02/1984 and 27/04/1978 respectively. In Column No. 5 of the said document, dates on which the petitioners have been inducted on C.R.T.E are also mentioned as 01/03/1990, 01/01/1989, 01/02/1989 and 27/04/1983.

18. He, therefore, submits that the petitioners have regularized the services of the respondents by bringing them on C.R.T.E. and giving them the benefits incidental and consequential thereto. He, therefore, submits that the issue of back wages is restricted only to the period of about 3 years from 01/06/1987 till the respondents were taken on C.R.T.E. as the benefits thereafter have been paid to them.

19. I have recorded the statement of Mr. A.S. Shelke on the basis of Exhibit X placed on record. Considering the same, and the findings on facts arrived at by the Labour Court, I am unable to accept the contention of Mr. D.R. Shelke that the respondents could not prove completion of 240 days in continuous employment and that the impugned award deserves to be quashed and set aside.

20. However, I am convinced by the submissions of Mr. D.R. Shelke that the Labour Court should not have granted 70% back wages and 100% back wages respectively as if the same has to be granted as a matter of course. The Apex Court in the case of Babu Lal v. Haryana State Agricultural Marketing Board, 2009 LLR 936, has observed in paragraph Nos. 9, 10 and 14 as under:--

"9. 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. Keeping these observations of this Court in mind, let us now consider whether the High Court was justified in holding that in the admitted facts of this case, the appellant was entitled to the salary as claimed. The Office Memorandum of the respondent clearly shows that the appellant who was working as Assistant Secretary, Marketing Board, Hasanpur was promoted to the post of E.O.-cum-Secretary with effect from 2nd of November, 1995 in the pay scale of Rs. 2000-20-2300-EB-75-3200 and further revised with effect from 1st of January, 1996 to Rs. 7450-225-11500. In the said office memorandum, it was also made clear that no arrears of pay would be made for the period for which he had actually not worked.

14. At the risk of repetition, the aforesaid office memorandum would also make it clear that no arrears of pay will be made for the period for which he had actually not worked. That being the position, we are not in a position to upset the conclusions arrived at by the High Court in the aforesaid second appeal which is impugned before us in this appeal."

The Apex Court in the case of Haryana Urban Development Authority Vs. Om Pal, AIR 2008 SC 475 : (2007) 113 FLR 831 : (2007) 5 JT 560 : (2007) 2 LLJ 1030 : (2007) 5 SCALE 507 : (2007) 5 SCC 742 : (2007) 2 SCC(L&S) 255 : (2007) 4 SCR 1091 , has observed in paragraph No. 7 as under:--

"7. Moreover, it is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full back-wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any."

21. It is, therefore, apparent that the Labour Court is not empowered to

mechanically grant the back wages. It needs to be established that the workmen had made a proper effort for seeking alternate employment and despite their efforts, could not secure such an employment. I am also inclined to consider the subsequent events, by which the respondents have been granted benefits of continuity. Amongst the 4 respondents, Mr. D.G. Patil, Mr. M.N. Patil and Mr. M.E. Koli have retired from service after attaining the age of superannuation.

22. In this backdrop, I deem it proper to modify the impugned awards only to the extent of depriving the respondents of the back wages as granted by the Labour Court from the date of their termination till the date on which they have been given effect of C.R.T.E. As such, this is roughly a period of about 3 years. Since the respondents have got all monetary benefits from the effective date of C.R.T.E, they are not required to claim back wages for that period.

23. In the light of the above, these petitions are partly allowed. The impugned awards dated 02/11/1983 are modified only to the extent of depriving the respondents of the 70% back wages and 100% back wages respectively, granted by the Labour Court, for the period 01/06/1987 till the effective date of their being brought on C.R.T.E.

24. Needless to state, all the service benefits and retiral benefits available to the respondents shall be paid to them without causing any further delay and preferably within a period of 4 (four) months from today.

25. Rule is, accordingly, made partly absolute.