

**(1998) 01 BOM CK 0001**

**In the Bombay High Court**

**Case No : Writ Petition No. 2493 of 1995**

The State of Maharashtra

APPELLANT

Vs

Dnyaneshwar Rakmaji Aher and another

RESPONDENT

**Date of Decision : 20-01-1998**

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Industrial Disputes Act, 1947 — Section 10, 12, 2, 25  
Limitation Act, 1963 — Section 3

**Citation :** (1998) 3 ALLMR 601 : (1998) 3 BomCR 355 : (1998) 1 BOMLR 326 : (1998) 2 MhLj 135

**Hon'ble Judges :** B.H. Marlapalle, J

**Bench :** Single Bench

**Advocate :** S.C. Chillarge, A.G.P, for the Appellant; S.T. Shelke, for the Respondent

## Judgement

B.H. Marlapalle, J.—This petition, filed under Article 227 of the Constitution of India, challenges the Award dt. 4-2-1995 passed by the II Labour Court at Ahmednagar in Reference IDA No. 60/1992, by which the petitioner Department of the Maharashtra State has been directed to reinstate respondent employee, with continuity in service and backwages w.e.f. 14-6-1990.

2. The respondent was appointed on daily wages as Unskilled labour in Kukadi Irrigation Project, Division No. 2, Narayangaon w.e.f. 22-5-1979 and he continued to be employed as such till 24-3-1985 and thereafter, he did not report for duty. On or about 16-4-1990, the respondent, for the first time, made an application for re-employment and there was no response. By his letter dt. 25-6-1990, he was informed by the Executive Engineer, Kukadi Irrigation Project, Division No. 2, Narayangaon, that as there was no work available in the said Project, he could not be re-employed. The respondent, thereafter, submitted a Notice of Demand dt. 3-9-1990, addressed to the Superintending Engineer as well as Executive Engineer and, for the first time, he alleged that he was illegally removed from service w.e.f. 1-6-1985 and that the said oral removal from

service was illegal. The respondent, therefore, claimed for reinstatement with continuity in service and backwages w.e.f. 1-6-1985. As there was no reply to this Notice of Demand, he approached the Conciliation Officer, u/s 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) for reinstatement with continuity in service and backwages till 17-9-1990. By letter dt. 10-7-1991, addressed by the Executive Engineer, Kukadi Project, Division No. 6, Narayangaon, it was informed to the Conciliation Officer and Assistant Commissioner for Labour, Ahmednagar, that the respondent was employed as an Unskilled Dailywage Labour under Division No. 2 w.e.f. 22-5-1979 till 24-3-1985 and thereafter, he did not report for duty. It was further informed that on 16-4-1990 the respondent had submitted an application for re-employment and the same was replied to by letter dt. 25-6-1990. The petitioners also informed the Conciliation Officer that the respondent did not raise any grievance for the alleged illegal termination from the service for more than five years and there was no case for reinstatement in service, as demanded by the respondent. Notwithstanding the reply filed by the petitioners before the Conciliation Officer, it appears that the demand raised by the respondent came to be referred for adjudication by the Labour Court, Ahmednagar, sometime in the year 1992 and the Reference was registered as Reference (IDA) No. 60/1992.

3. Before the Labour Court, the respondent contended that he had completed about six years of service in Kukadi Irrigation Project, Division No. 2, Narayangaon, as Unskilled Labour on daily wages and he was illegally terminated on 31-5-1985. The respondent, therefore, claimed that the alleged termination was illegal as there was no Notice, no Notice pay was given and no compensation was paid to him, even though he had completed more than 240 days of service, during the preceding twelve months, before the date of alleged illegal termination. The petitioner opposed the demand by filing a written statement and stated that it was not a case of termination, but the respondent himself did not turn at any time after 25-3-1985 for work and he kept mum for about five years. It was further submitted that as there was no case of termination, at the hands of petitioners, the question of illegal termination did not arise either with or without notice and payment of compensation. The petitioners seem to have also relied upon a chart of statement showing details of employment of respondent during the period from 22-3-1979 to 25-3-1985 and the petitioners finally had prayed that as there was no case of alleged termination, leave alone retrenchment, the reference was devoid of merits and same ought to be rejected on that ground alone. However, the Labour Court, Ahmednagar, on hearing both the parties and on perusal of the oral and documentary evidence, referred to hereinabove, directed to reinstate the respondent with continuity in service and full backwages w.e.f. 14-6-1990.

4. The learned A.G.P., appearing for the petitioner submitted that the respondent was a temporary unskilled labour on daily wage basis and he was not removed from service by the petitioners. The respondent, on his own accord, did not present himself for work as daily wage unskilled labour on or after 25-3-1985

and this was not a case of termination or illegal termination, at the hands of the petitioners. The learned A.G.P. further submitted that the Labour Court ought to have rejected the Reference on the ground that there was no case of termination or illegal termination, as the respondent had himself left the temporary employment w.e.f. 25-3-1985 onwards. In any case, the Labour Court ought to have taken a Notice of the stale demand of reinstatement in service, raised after an inordinate delay of five years and rejected the reference, even though there is no period of limitation prescribed under the Act of 1947 for raising the demand of reinstatement, urged the learned A.G.P. Lastly, he has also relied on the judgment of the Supreme Court in the case of Executive Engineer, State of Karnataka v. K. Somashetty and others, reported in 1997(2) C.L.R. 387, wherein, it has been held by the Supreme Court that Irrigation Department of the State is not an "Industry" as defined under the Act.

5. The learned Counsel appearing for the respondent in reply submitted that the reference has rightly been allowed by the Labour Court and for the delay caused in raising the demand of reinstatement, the Labour Court has applied its mind and rightly denied the backwages prior to 14-6-1990. He further submitted that once a reference has been made by the competent authority, u/s 10(1) r.w. 12(3) of the Act, Labour Court has no jurisdiction to consider the point of delay in raising the dispute of alleged termination and the Labour Court has no other choice but to proceed with the case on merits. It is also urged that even as per the admitted statement, regarding the total number of days put in by the respondent during the period between 22-3-1979 and 25-3-1985, the respondent has completed continuous service of more than five years and the Award passed by the Labour Court does not suffer from any error apparant on the face of the record, warranting this Court to use its powers of superintendence under Article 227 of the Constitution of India.

6. This petition was admitted on 14-6-1990 and the impugned Award was stayed, as a result of which, the respondent has not been reinstated till this date. On perusal of the documents annexed to the petition as well as documents in the R. & P. called, from the Labour Court in Reference (IDA) No. 60/1992, it is clear that the respondent was working as unskilled labour on daily wages under the Kukadi Irrigation Project, Division No. 2, Narayangaon, during the period from 22-3-1979 to 25-3-1985. The application of the respondent dt. 14-6-1990, made for the first time after 25-3-1985, for re-employment was replied to by the petitioner on 25-6-1990. It was clearly stated that his case for re-employment could not be considered because no work was available. It is evident from this letter dt. 25-6-1990 that the Kukadi Irrigation Project, Division No. 2, Narayangaon, was closed. The Labour Court has allowed the reference on the ground that the petitioner did not comply with the requirements of section 25-F and 25-G of the Act. On the point of the objections regarding the delay in raising the demand, as contended by the petitioner, the Labour Court held that the concept of limitation is unknown to the proceedings under the Act. However, on the main issue, regarding the contentions of the petitioners that it did not

terminate the service of the respondent and that he himself did not remain present for work on and after 25-3-1985 and this action of the respondent in itself went to prove that he was not interested in the service of the petitioners, no findings have been recorded. Even while framing the issues in the impugned order, the learned Judge of the Labour Court has proceeded on the presumption that there was termination of service of the respondent, at the hands of the petitioners.

7. In the case of *Vinodrai Ratnotar v. State of Gujarat*, reported in 1994 L.I.C. 881, a Division Bench of the Gujarat High Court; after considering the ratio laid down by the Supreme Court, in the case of *Bangalore Water Supply Board*, 1978 L.I.C. 467 (S.C.) and also considering a Division Bench judgment of the Gujarat High Court in the case of *PWD Employees Union v. State of Gujarat*, 1987(28) GujLR 1070; has held that the Department of Industries, Mines and Power of the Gujarat State was not an Industry, as defined u/s 2(j) of the Act. In the case of *Union of India (UOI) Vs. Jai Narain Singh*, , the Apex Court held that the Central Ground Water Board is not an Industry, as defined under the Act. In a more recent judgment of the Supreme Court, in the case of *Executive Engineer, State of Karnataka v. K. Somashetty & others* (supra), relied upon by the learned A.G.P, it has been held that the Irrigation Department of Karnataka State is not an industry, as defined under the Act. The petitioners, therefore, contended that on this preliminary issue viz. that the petitioner is not an Industry, as defined under the Act, a reference made on the demand of respondent, was not maintainable before the Labour Court. It is clear from the record that this point was never raised before the Labour Court and it has now been raised for the first time, during the course of arguments and mostly, on the basis of the two judgments of the Supreme Court cited hereinabove. In the case of *General Manager, Telecom Vs. A. Srinivasa Rao and Others*, , the Apex Court has reviewed its judgment in the case of *Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India* and another, and held that such an amendment made in the definition of the term "Industry" in 1982 has not been brought into force by the Central Government by issuance of Notification required for the purposes and it would not be necessary for the Court to consider whether the Telecommunication Department of the Union of India would be an industry, within the meaning of section 2(j) of the Act in the amended provision, which has not been brought into force. It is further held that the question as to whether the Telecommunication Department is an industry, within the meaning of the definition contained in the existing unamended section 2(j) of the Act, has to be answered, according to the decision of the Apex Court in the case of *Bangalore Water Supply Board* (supra). The Apex Court further held that the decision in the case of *Bombay Telecommunication Canteen Employees Association's case* (supra) cannot be treated to be as laying down a correct law.

8. The learned Counsel for the respondent submitted that possibility of review of the earlier two judgments of the Supreme Court viz. *Executive Engineer, State of*

Karnataka and Union of India v. Jaynarayan Singh (supra) cannot be ruled out though the learned Counsel was not very sure whether there is any review pending before the Apex Court on the said decisions. He urged that the issue whether the Irrigation Department is an Industry or not has to be decided on the basis of the law laid down by the Apex Court (Larger Bench) in the case of Bangalore Water Supply Board (supra). As the present petition succeeds on the points raised before the Conciliation Officer as well as Labour Court viz. it is not necessary to record a finding on the issue raised for the first time by the petitioners before this Court, that the Irrigation Department is not an industry, as within the meaning of the Act.

9. The learned Judge of the Labour Court in the impugned award did not frame any issue as to whether there was a termination of service of the respondent at the hands of the petitioners. The Circular of the Maharashtra State, Irrigation Department, Bearing No. LLB/1684/(674/84), dt. 10-5-1985 is regarding the discontinuation of the services of surplus labourers and the said Circular is admittedly not applicable in the instant case. But the fact remains that the letter dt. 14-6-1990, which was replied by the petitioners vide letter dt. 25-6-1990, was for re-employment and not for reinstatement in service. When a request is made for re-employment in service, an inference is necessarily required to be drawn that there was no dispute regarding the earlier disengagement from service and the respondent requested for a fresh employment in view of some changed circumstances. On the other hand when there is a demand for reinstatement in service, such a demand presupposes termination of service for which the employee has a grievance, in as much as, such a termination was either unjustified, unreasonable or illegal.

10. The learned Judge of the Labour Court in the impugned Award observed that as the provisions of Limitations Act are not applicable for adjudication of disputes under Act, the plea of the petitioners of long delay of more than five years, was not considered and the same came to be rejected. The merit of this case has to be decided on the touchstone of the law laid down by the Apex Court in the case of Inder Singh S Sons Ltd. v. Their Workmen 1961(II) LLJ 89 in which, inter alia, it is held that :

"It is true that the laws of limitation which might bar any Civil Court from giving remedy in respect of lawful rights are not and should not be applied by the Industrial Tribunal. On the other hand it is a well accepted principle of industrial adjudication that overstate claims should not generally be encouraged or allowed unless there is a satisfactory explanation for the delay. Apart from the obvious risk to industrial peace from the entertainment of claims after a considerable long lapse of time, it is necessary also to take into account the unsettling effect this is likely to have on the employer's financial arrangement. Whether the claim has become too stale or not will depend on the circumstances of each case."

11. More recently, in the case of R. Ganeshan Vs. Union of India (UOI) and Others, , a learned Single Judge of this Court- on the point of referring stale case

for the adjudication under the Act held thus (Para 9 Bom.C.R.):

"It is true that the Act does not lay down a period of limitation. This, however, does not mean that dispute can be raised at any time, even after an inordinate delay and the Government is bound to make a reference. If there is an inordinate delay that can be a legitimate ground for holding that there does not exist in presenti an industrial dispute."

12. In the instant case, there is not an iota of explanation coming forth from the respondent as to why he kept quite for a long period of five years, if his disengagement from service from 25-3-1985 was illegal or otherwise unjust. Even, the Labour Court, did not call upon the respondent to justify his action of keeping quite for such a long period so as to rebut the contentions of the petitioner that there was no termination of his service. In these circumstances, a conclusion will have to be drawn that there was no dispute regarding alleged illegal termination of service till respondent received the reply dt. 25-6-1990 from the petitioners. The demand for reinstatement made on 3-9-1990 was certainly by way of an afterthought and the same applies to the demand before the Conciliation Officer submitted on or about 15/17-9-1990. As there was no dispute regarding the alleged termination of service for a period of five years, as is clearly demonstrated by the behaviour of the respondent, there was no occasion for the Conciliation Officer or the competent authority to make a reference for adjudication of such a demand which was not only stale but also fabricated, by way of an afterthought and/or to make a backdoor entry in Government service.

13. The learned Judge of the Labour Court has granted reinstatement with continuity in service with full backwages, solely on the ground that the respondent had completed 240 days service in one year. This reasoning given by the Labour Court cannot be accepted in support of the impugned award in view of the law laid down by the Supreme Court in the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . The relevant observations of the Supreme Court, outlining the disastrous consequences, of such reliefs being granted on the basis of 240 days of service in one year, have been echoed by the Apex Court in the following words :

"Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in more than 240 days has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment register. The courts can take judicial notice of the fact that such employment is sought and given directly for various

illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 days or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not at all those who gain such back-door entry in the employment are in need of particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies; Ultimately, it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

14. In the instant case also, the relief granted by the Labour Court, in a case where the dispute did not exist for a period of five years, has irreparable effects on public employment. A temporary unskilled dailywage labour, appointed on the sweet will of an officer, in effect, has been granted permanent Government Service, by the Labour Court inspite of the fact that his initial engagement in the Government service was purely on a temporary basis. There is a prescribed procedure to be followed for appointments on permanent basis in the Government service. To accept the impugned award of the Labour Court is not only against the Law laid down by the Apex Court, as stated hereinabove, but also against the public policy, as it leads to a backdoor entry in Government service, when millions are waiting in queue, after having registered their names in the Employment Exchanges, for appointments in Government Service.

15. There is another aspect which also needs to be considered. Admittedly, Kukadi Irrigation Project, Division No. 2, Narayangaon, where the respondent was in employment on a temporary basis, has since been closed. The Apex-Court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, , interalia, held as under :

"It is seen that the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de hors the rules."

16. The case at hand even does not involve termination of service. The reference was made for adjudication, when there was no termination of service and no

such dispute ever existed prior to 3-9-1990 when the employee raised a demand for reinstatement. The demand was, therefore, devoid of merits.

17. It is well settled that the competent authority would be justified in rejecting a reference for adjudication in respect of demands which are over-stale. At the same time, when the demands which are stale are referred for adjudication, the claimant employee is necessarily required to explain the reasons for the inordinate delay, in approaching the Conciliation Officer or his inaction for such a long period. If such an explanation does not come forward or if the adjudicator is not convinced by the reasons given in respect of such a delay or inaction on the part of the claimant employee, the adjudicator has the powers to reject the reference. In the instant case, the learned Counsel for the respondent has submitted that the Labour Court, in the impugned award, has denied backwages for the intervening period of about five years and hence, the award cannot be held to be illegal or erroneous. These submissions are devoid of merits. The learned Counsel's next contention that in any case the respondent had completed more than five years of service and he was entitled for the benefits of Kalelkar Award merits no consideration for the reasons that no such demand was made at any time either before the Conciliation Officer or the Labour Court and the demand, even if made at this stage, amounts to an over-stale demand.

18. In a case like the present one, if the employer has taken a plea, right from the very first stage of conciliation, that the service of the employee was neither terminated nor discontinued by the petitioners and that the employee himself did not report for the temporary work which was allotted to him, the Labour Court ought to frame and decide a preliminary issue, as to whether there was a termination of service because unless the same issue is decided there will not be any occasion for existence of an industrial dispute, as defined under the Act. If on an enquiry it is held by the adjudicator that there was no termination of service, as alleged by the employee, the Labour Court/ adjudicator will be justified in rejecting the reference as being devoid of merits, at this preliminary stage itself. In the instant case, the Labour Court ought to have framed an additional issue namely "whether there was termination of service", as alleged by the respondent petitioner. However, without enquiring into the issue of factum of termination of service, the Labour Court proceeded on the assumption that the petitioners had removed the respondent from service. The basic issue, which goes to the root of the matter, regarding the existence of an alleged dispute of termination of service, has not been adjudicated upon by the Labour Court. From the material available on record, it is evident that the department had not terminated or removed the respondent from the service.

19. For all the reasons set out hereinabove, the impugned award suffers from errors apparent on the face of the records. The order passed by the Labour Court is not only illegal but has also resulted into miscarriage of justice. The petitioners, have made out a case for interference with the impugned award by this Court.



20. In the result, the impugned award is hereby quashed and set aside and Reference (IDA) No. 60/1992 is rejected. The petition is accordingly allowed and Rule is made absolute, with no order as to costs.

21. Petition allowed.