

(2017) 06 BOM CK 0025

BOMBAY HIGH COURT

Case No: 3825 of 1998

The State of Maharashtra

APPELLANT

Vs

Shri Ramnath Nivrutti Khedkar

RESPONDENT

Date of Decision: June 6, 2017

Acts Referred:

- Industrial Disputes Act, 1947, Section 25F, Section 25G - Conditions precedent to retrenchment of workmen - Procedure for retrenchment

Hon'ble Judges: Ravindra V. Ghuge

Bench: SINGLE BENCH

Advocate: N. T. Bhagat, Ajinkya Reddy

Judgement

1. The petitioner/State is aggrieved by the judgment and award dated 27/06/1997, by which, Reference (IDA) No. 25/1988, has been partly allowed and the respondent is granted continuity of service from 01/07/1988, without back wages.

2. Pursuant to the Court notice dated 19/04/2017, the respondent appeared in person before the Court today. Since, I realized that he was unable to engage an advocate due to paucity of funds, I have called upon Shri Ajinkya Reddy, learned advocate to appear as amicus curiae for representing the cause for the respondent.

3. This matter was heard after an adjournment post lunch.

4. I have considered the submissions of the learned advocates for the respective sides.

5. It is apparent from the impugned judgment that the respondent had claimed to have been working intermittently and in different spells. At times, he had also

worked on the Employment Guarantee Scheme ("EGS").

6. The respondent had approached the Labour Court in Reference (IDA) No. 25/1988, claiming reinstatement with continuity and full back wages with effect from 01/09/1986. In response to his statement of claim, the petitioner filed it's written statement stating that the respondent was working intermittently. He had put in 55 days on daily wages between 01/10/1982 till 07/12/1982, 197 days in between 02/01/1983 to 31/12/1983 and 46 days in between 01/04/1984 to 18/06/1984. The payments made to him and the details of the vouchers maintained in the cash book were also produced before the Labour Court. Based on the oral and documentary evidence, the Labour Court concluded that the respondent had not completed 240 days in a calender year in service with the petitioner. Therefore, his disengagement without compliance of Section 25F of the Industrial Disputes Act ("ID" Act) was sustained.

7. In paragraph No. 12 of the impugned judgment, the Labour Court concluded that the respondent had worked on EGS. It is settled law that an employee working on EGS cannot claim reinstatement or continued employment as a matter of right. However, the Labour Court has granted the relief of reinstatement without back wages to the respondent because the petitioner did not maintain a seniority list. On account of failure to maintain a seniority list, the Labour Court concluded that there was a breach of Section 25G of the ID Act.

8. In my view, though the said conclusion would be unsustainable looking at the duration of work performed intermittently by the respondent, the Labour Court could have quantified compensation instead of reinstatement. The respondent submits that ever since his disengagement from 18/06/1984, he is not in employment with the petitioner for the last 32 years. An application for last drawn wages under section 17B of the ID Act was not filed before this Court though the petition was admitted and the impugned award was stayed by the order of this Court dated 11/04/2001.

9. It is, therefore, apparent that the respondent was not continuously in employment, had not completed 240 days in continuous service and had worked intermittently, coupled with the fact that the respondent is not in employment for 32 years.

10. The Hon"ble Apex Court has concluded that when short spell of employment is followed by a long duration of unemployment, reinstatement is impractical and quantifying compensation at the rate of Rs. 30,000/per year of service, would be an appropriate relief, in the following four judgments :

1. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],

3. BSNL Vs. Man Singh [92012] 1 SCC 558] and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].

11. Considering the above and the fact that the respondent had not moved an application for last drawn wages under Section 17B, I find it appropriate to grant compensation to the respondent by modifying the impugned judgment and award.

12. This petition is, therefore, partly allowed. The impugned judgment and award dated 27/06/1995 is modified by directing the petitioner to pay compensation of an amount of Rs. 60,000/(Rupees Sixty Thousand only) in lieu of reinstatement in service with continuity. The said compensation shall be paid within a period of three months from today, through the Bank transactions to be deposited in the savings account of the respondent bearing No. 31088762161 (IFSC: SBIN0005995) with Shirur (Patoda) branch of State Bank of India. If the said amount is not paid within the said period, it would carry interest at the rate of 6% per annum from the date of the impugned award.

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

14. The fees to be paid to learned Advocate Shri Ajinkya Reddy are quantified at Rs. 5,000/(Rupees Five Thousand only) which shall be paid through the High Court Legal Services Authority, Sub Committee, Aurangabad.