

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 4639 OF 2012

- 1) Asaram Bhaguji Pagire,  
Age: 44 yrs., Occ: Labourer
- 2) Kisan Dadabhau Karale,  
Age: 52 yrs., Occ: Labourer
- 3) Bhaskar Madhav Karale,  
Age: 40 yrs., Occ: Labourer
- 4) Tukaram Karbhari Karale,  
Age: 55 yrs., Occ: Labourer
- 5) Shashikant Balu Karale,  
Age: 45 yrs., Occ: Labourer
- 6) Machindra Sakharam Pagire,  
Age: 45 yrs., Occ: Labourer

All R/o Agadgaon, Taluka and  
District Ahmednagar

..PETITIONERS

VERSUS

Ahmednagar Zilla Parishad,  
Ahmednagar  
Through its Chief Executive Officer

..RESPONDENT

Mr P. V. Barde, Advocate for petitioners;  
Mr S. T. Shelke, Advocate for respondent

**WITH**  
WRIT PETITION NO. 10569 OF 2014

The Chief Executive Officer,  
Zilla Parishad, Ahmednagar

..PETITIONER

VERSUS

Asaram Bhaguji Pagire,  
Age: Major, Occ: Private Job/Agri.,  
R/o. Aradgaon, Tq. Nagar,  
Dist. Ahmednagar

..RESPONDENT

**WITH**

WRIT PETITION NO. 10568 OF 2014

The Chief Executive Officer,  
Zilla Parishad, Ahmednagar

..PETITIONER

VERSUS

Tukaram Karbhari Karale,  
Age: Major, Occ: Private Job/Agri.,  
R/o. Aradgaon, Tq. Nagar,  
Dist. Ahmednagar

..RESPONDENT

**WITH**

WRIT PETITION NO. 10567 OF 2014

The Chief Executive Officer,  
Zilla Parishad, Ahmednagar

..PETITIONER

VERSUS

Kisan Dadabhau Karale,  
Age: Major, Occ: Private Job/Agri.,  
R/o. Aradgaon, Tq. Nagar,  
Dist. Ahmednagar

..RESPONDENT

**WITH**

WRIT PETITION NO. 10566 OF 2014

The Chief Executive Officer,  
Zilla Parishad, Ahmednagar

..PETITIONER

VERSUS

Bhaskar Madhav Karale,  
Age: Major, Occ: Private Job/Agri.,  
R/o. Aradgaon, Tq. Nagar,  
Dist. Ahmednagar

..RESPONDENT

**WITH**

WRIT PETITION NO. 10565 OF 2014

The Chief Executive Officer,  
Zilla Parishad, Ahmednagar

..PETITIONER

VERSUS

Shashikant Balu Karale,  
Age: Major, Occ: Private Job/Agri.,  
R/o. Aradgaon, Tq. Nagar,  
Dist. Ahmednagar

..RESPONDENT

**WITH**

WRIT PETITION NO. 10564 OF 2014

The Chief Executive Officer,  
Zilla Parishad, Ahmednagar

..PETITIONER

VERSUS

Machindra Sakharam Pagire,  
Age: Major, Occ: Private Job/Agri.,  
R/o. Aradgaon, Tq. Nagar,  
Dist. Ahmednagar

..RESPONDENT

Mr S. T. Shelke, Advocate for petitioners;  
Mr P.V. Barde, Advocate for respondent

**CORAM : N.W. SAMBRE, J.**

**Date of reserving  
the order : 20<sup>th</sup> April, 2015**  
**Date of pronouncing  
the order : 30<sup>th</sup> April, 2015**

**ORDER :**

Writ Petition Nos.10569, 10568, 10567, 10566, 10565 and 10564 of 2012 are preferred by the employer Zilla Parishad, whereas Writ Petition No.4639 of 2012 is preferred by the employee. The orders impugned in the present petitions are the one passed by the Judge, First Labour Court, Ahmednagar, in Reference (IDA) Nos.237, 238, 240, 241, 242 and 243 of 1994.

2. A Reference under section 10 read with sec. 12 of the Industrial Disputes Act, 1947, was referred by the Deputy Commissioner of Labour, Nasik to the Labour Court. In the said Reference, the employee, i.e. second party and the employee first party contested the dispute in the matter of entitlement of reinstatement with continuity of service and back wages. The learned Labour Court, while dealing with the Reference, framed issue as regards the illegal termination and answered the same in favour of the employee, however, refrained itself from passing order of reinstatement and proceeded to award the retrenchment compensation, by order dated 7<sup>th</sup> January, 2012. The employer has preferred the

petitions questioning the grant of retrenchment compensation, whereas employees have sought enhancement of compensation based on the judgment of the Apex Court. Thus, the present petitions.

3. The petitions preferred by the employer are objected on the ground that there is inordinate delay of 2-1/2 years, which was sought to be justified by the learned Counsel for the employer, on the ground that in view of settlement, the amount ordered by the Labour Court was already paid and it was orally understood that the employees will not question the quantum of compensation, however, since the employees have preferred writ petition, the same has prompted the employer to prefer the writ petitions.

4. Be that as it may, this Court proceeds to decide petitions preferred by both the parties.

5. While questioning the order of awarding retrenchment compensation, the learned Counsel appearing on behalf of the employer would urge that the requirement of section 25-F and G of the Industrial Disputes Act, was not established, as according to him, an adverse inference is drawn against the employer for non-production of documents. He would urge that since the employees have not completed 240 days of service in a calendar year, retrenchment compensation, as

ordered, is not sustainable. In support of the same, he has sought to place reliance upon the number of days for which the employees have worked in a calendar year. Learned Counsel, in support of his contention, that the appointments in question were only for a fixed period and in such cases the employees are not entitled to any compensation, has sought to place reliance on the judgment of the Apex Court, in the matter of **State of Rajasthan vs. Rameshwar Lal Gahlot**, reported in AIR 1996 SC 1001. He would further urge that the burden to establish that the employee has worked for a period of 240 days in a calendar year is always on the concerned employee and it cannot be shifted on the employer and sought support from the judgment of the Apex Court, in the matter of **Chief Engineer, Ranjit Sagar Dam & anr. Vs Sham Lal**, reported in 2006 AIR SCW 3574. He has also relied upon the judgment of the Apex Court, in the matter of **Assistant Engineer, Rajasthan State Agriculture Marketing Board Sub-Division, Kota vs. Mohan Lal**, reported in 2013 (III) CLR 305, so as to canvass that the Labour Court, before exercising the judicial discretion should keep in mind the relevant factors, viz. the mode and manner of appointment, nature of employment and length of service. According to him, the burden that is sought to be shifted on the petitioner – employer is not sustainable. He has also placed reliance on the judgment of the Apex Court, in the matter of **Regional Manager, SBI vs. Rakesh Kumar Tewari**, reported in (2006) 1 SCC 530, so as to canvass the same proposition.

6. Mr Barde, learned Counsel appearing on behalf of the employees would urge that the findings recorded by the Labour Court are in tune with the evidence brought on record and the Labour Court was right in drawing adverse inference against the employer as the employer has suppressed the relevant documents. In support of his contention, he has taken me through the findings recorded by the Labour Court. He would further urge that the Tribunal has rightly recorded the findings about illegal retrenchment and awarded inadequate compensation. In support of his contention, he has sought to place reliance upon the judgment of the Apex Court, in the matter of **Rajasthan Lalit Kala Academy vs. Radhey Shyam**, reported in **AIR 2009 SC (Supp) 919**; **Bharat Sanchar Nigam Ltd. vs. Bhurumal**, reported in **2013 (15) Scale 131** and **Faridan vs. State of U.P.**, reported in **2010 (1) SCC 497**.

7. In the light of rival submissions advanced on behalf of the parties, it is required to be noted that consequent upon the pleadings of the parties, the issues were framed and findings were recorded thereon by the Labour Court, at page 34, which read thus :-

Sr.No	Issues	Findings
1	Whether the reference is maintainable?	Yes
2	Whether the reference is barred by limitation?	No
3	Whether this Court has jurisdiction to entertain this reference?	Yes

4	Does second party prove that he was continuously in service with the first party as a labourer since 1.5.85?	Yes
5	Does second party prove that he was continuously (sic) (in) service with the first party till 30.4.90?	Yes
6	Does second party prove that he has (serve) (sic)(served) for 240 days in a (preceding) (sic) (preceding) year of the alleged date of termination?	Yes
7	Does second party prove that (he) (sic) (his) service were terminated illegally w.e.f. 1.5.90?	Yes
8	Is second party entitled for the relief of reinstatement with continuity and back wages?	No. The second party is only entitled for the compensation as per final order.
9	Does first party prove that the engagement of the second party is governed by Sec-2(oo)(bb) of ID Act?	No
10	What order and relief?	Reference is answered partly in the affirmative

8. While dealing with the issue of illegal termination and non-payment of retrenchment compensation, the Labour Court has taken into account evidence of witness Kondiba, who was examined by the employees at Exh.U-31. It is noticed by the Labour Court, from the said evidence, that the employee was engaged as a daily wager from 1<sup>st</sup> May, 1985 till 30<sup>th</sup> April, 1990. Though there is an admission that the work was provided continuously, but it is mentioned that there were three different musters maintained by the employer, so as to show technical breaks. It is noticed



by the Labour Court that so as to rebut the said evidence, the employer was required to produce an attendance register. The Lower Court noticed that ample opportunity was given to the employer to produce documents by passing orders at Exhs.U-19, U-22 and U-27, in compliance whereof some documents in the form of muster roll and pay register extracts were produced at Exhs.C-9/1 to 19 on 6<sup>th</sup> October, 2009 and seniority list Exhs. C-16/1 and 2 on 15<sup>th</sup> November, 2010. The attendance registers were for the period 1985 to 90 and pay rolls for the month of February, 1985, August, 1985, October 1985 vide Exhs.C-25/1 and 2 to 4, attendance registers and pay rolls for the month of January, 1989, March, 1990 and August, 1990 vide Exhs.C-32/1, 2, 3 and seniority list for the year 1986 vide Exh.C-32/5 and 6. The Labour Court, while analyzing the said evidence has noticed that entire documents which should have been produced by the employer were not produced, though so ordered. Non-production of the record, though the employer was ordered time and again, has resulted into drawing of the adverse inference. While drawing the adverse inference, the Labour Court noted that the oral termination could be concluded from the available record with effect from 1<sup>st</sup> May, 1990 and held the same as retrenchment. The Labour Court analyzed the availability of work to the various employees on CRT establishment, to the workers like, A.R. Gavli and R.B. Bhingardive, whereas noticed that the seniors like the employees before this Court were not provided with the work and violated the provisions of section 25-B.

9. The Labour Court has given finding that the employee worked with the employer from 1<sup>st</sup> May, 1985 to 1<sup>st</sup> April, 1990 and ordered payment of retrenchment compensation to the tune of Rs.15,000/-.

10. The claim put-forth by the learned Counsel appearing on behalf of the employer that the burden was wrongly shifted on the employer is concerned, it is required to be noted that the employees first discharged their burden by entering into the witness box and have sought to establish their case through oral and documentary evidence, whereas employer was required to discredit the said evidence by placing on record appropriate evidence, which has prompted the Labour Court to pass appropriate order; calling upon them to produce relevant record. In absence of production of such record, in my opinion, the Labour Court was right in drawing the adverse inference against the employer as employees have already discharged their burden by entering into the witness box and deposing in support of their claim. The eventualities which are considered by the Apex Court in the matter of State of Rajasthan vs. Rameshwar Lal Gahlot (cited supra) were pertaining to the appointment for a fixed period, which is not a case in hand; whereas in the matter of Chief Engineer, Ranjit Sagar Dam & anr. Vs Sham Lal (cited supra) is concerned, of course, the Labour Court was alive to the fact that the burden was on the workman to prove that he has worked for 240 days or more in a calendar year. In the present case, the Labour Court noticed

that the said burden was discharged by the employees by entering into the witness box and so far as the employer is concerned, no oral evidence was adduced. So as to discharge the said burden, the employer was called upon by the Labour Court to produce the record in support of the claim that the employees have not worked for 240 days in a calendar year, which order was complied only in part and the Labour Court as such has rightly drawn adverse inference against the employer. In view thereof, in my opinion, the support sought to be drawn by the employer from the judgments of the Apex Court will be of hardly any assistance.

11. So far as the compensation as is ordered by the Labour Court is concerned, it will be appropriate, in my opinion, to refer the judgments of the Apex Court, which are cited by the learned Counsel for the employees. In the case of Rajasthan Lalit Kala Academy vs. Radhey Shyam (cited supra), the Apex Court, having noticed violation of section 25-F, has ordered payment of retrenchment compensation to the tune of Rs.3 Lacs. While observing that the relief of reinstatement with full back wages cannot be granted, in the said matter, it was noted by the Apex Court that the termination was on 31<sup>st</sup> January, 1985, whereas he was appointed on 7<sup>th</sup> June, 1980 at monthly salary of Rs.300/-.

12. Mr Barde, on the similar lines, has also placed reliance upon the judgments of the Apex Court in the matter of **Bharat Sanchar Nigam Ltd.**

**vs. Bhurumal**, reported in **2013 (15) Scale 131** and **Faridan vs. State of U.P.**, reported in **2010 (1) SCC 497**, so as to justify the order of payment of retrenchment compensation, but also sought enhancement.

13. Perusal of the order of the Labour Court, as is discussed herein above, the learned Labour Court has noted that though the employee has entered into the witness box, employer has failed to discharge its burden by not producing the relevant record, which was ordered as per Exhs.19 to 22. The Labour Court noted that the respondents were engaged as daily wage labourers, for the first time on 1<sup>st</sup> May, 1985 and continued upto 30<sup>th</sup> April, 1990. It is also noted that three different musters were maintained though the work was provided continuously and have sought to establish their case of continuous working for more than 240 days in a calendar year. The Labour Court, in my opinion, has rightly drawn adverse inference for not complying with the orders passed by it against the employer calling upon them to produce muster rolls and pay register extracts. Whatever documents were produced in compliance with the same, particularly on 6<sup>th</sup> October, 2009 and 15<sup>th</sup> November, 2010, the Labour Court proceeded to analyze the same and upon analyzing the documents, such as attendance register, pay roll at Exhs.C-25/1 to 4 and attendance register as well as pay roll at Exhs.C-32/1 to 3, seniority list Exhs.32/5 and 6, noted that all the documents were not produced by the employer, which were so directed. The learned Labour Court has taken

into account the breaks in service of the employees and then considering the law cited before it, held that the employees have worked continuously for more than 240 days in a calendar year. Once it is held that the employees have worked continuously for more than 240 days in a calendar year, the length of service that was put into from 1985 to 90 is required to be taken into account. The Labour Court has proceeded to pass an order of awarding meager compensation. Once it is established that from 1<sup>st</sup> May, 1985 till 30<sup>th</sup> April, 1990 the employees were in service of the employer, the period of five years of service while considering the award of retrenchment compensation, in the light of the judgment cited *supra*, i.e. *Rajasthan Lalit Kala Academy vs. Radhey Shyam*, should have been adhered to.

14. For the foregoing reasons, in my opinion, the employer has not made out any case for interference in extra-ordinary jurisdiction of this Court, whereas the case of the employees is concerned, once it is held that from 1985 to 90 said employees were in continuous employment of the employer, the proper retrenchment compensation, in the light of the above referred judgments, would be Rs.2 Lacs per employee.

15. In the result, writ petition preferred by the employees stands allowed. It is ordered that the employer Zilla Parishad shall pay retrenchment compensation of Rs.2 Lacs to each employee, within a

period of three months from today. The order of the Labour Court stands modified to the above extent. In the facts and circumstances, there shall be no order as to costs.

**(N.W. SAMBRE, J.)**

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