

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.206/2017.

(S.B.)

Bhaskar Baliram Lande,
Aged about 64 years,
Occ-Nil,
R/o Adarsh Colony, Akola.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Forests,
Mantralaya, Mumbai-400 032.

2. The Deputy Conservator of Forests,
Akola Forest Division, Station Road,
Akola.

Respondents

Shri V.B. Bhise, the Ld. Advocate for the applicant.

Shri M.I. Khan, the learned P.O. for the respondents.

Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)

JUDGMENT

(Delivered on this 19th day of April, 2018.)

Heard Shri V.B. Bhise, the learned counsel for the
applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant has requested for regular pension from the date of his retirement alongwith interest as per G.Rs dated 22.11.1994 and 26.1.1996. He is also claiming directions to the respondents to immediately release back wages from the period from 15.1.2002 to 6.1.2010 with interest.

3. The applicant was working as a Labour in Akola Forest Division (R.2) since 7.8.1989 without break till 14.1.2002. He was terminated from service orally by respondent No.2 on 15.1.2002. He challenged the said order by filing a complaint before the Labour Court, Akola. His complaint was allowed by the Labour Court, Akola on 25.1.2006. The Government filed revision against the said order before the Industrial Court, Akola. But the same was dismissed and the applicant was reinstated in service on 6.1.2010. The applicant got retired on superannuation on 31.1.2014. On 27.1.2015, he has filed representation to the respondents for grant of pensionary benefits, regular pension and back wages. Again on 11.3.2015, he filed another representation for the same relief. However, nothing was done. The applicant, therefore, filed O.A. No. 337/2015 in which this Tribunal was pleased to pass the order on 28.9.2015 and directed the applicant to file representation.

4. According to the applicant, as per the directions of this Tribunal, he has filed representation on 11.3.2015 and claimed pensionary benefits, regular pension and back wages. A notice was also issued through the Advocate on 24.2.2016. Since no action was taken, the applicant has filed the present O.A.

5. Respondent No.2 i.e. the Deputy Conservator of Forests, Akola has filed affidavit in reply and submitted that the applicant was reinstated as per the order of the Labour Court, Akola on the post of Labour and got retired on superannuation on 30.11.2014. It is stated that as per the G.R. dated 16.10.2012, the applicant was absorbed in service as per the Government policy decision to accommodate temporary Labours who have worked for more than five years during the period from 1.11.1994 to 30.6.2004. In all 5089 posts were created and the applicant was found eligible and entitled to be absorbed. Accordingly appointment order was issued on 4.12.2012. The applicant accepted the terms and conditions of the said appointment order and also executed an affidavit and undertaking to that effect. Pending cases were also withdrawn against the applicant. The terms and conditions of the G.R. dated 16.10.2012 which are accepted by the applicant clearly show that the applicant will not be entitled for back wages and allied

benefits and the applicant has accepted the appointment and relinquished his previous service and benefits and, therefore, he is estopped from claiming the previous benefits.

6. The applicant has filed rejoinder to the affidavit in reply and has referred to the order passed by the Labour Court, Akola in ULP No. 11/2002 on 25.1.2006. The learned counsel for the applicant submits that as per order of the Labour Court, Akola, the applicant was held entitled to be reinstated in service with continuity and back wages w.e.f. 15.1.2002 till the date of his reinstatement in service. It is stated that the applicant is claiming back wages in view of order passed by the Labour Court, Akola on 25.1.2006.

7. The learned counsel for the applicant has invited my attention to the order passed by the Labour Court, Akola in Complaint Case No. 11/2002. Operative part of the of the said order dated 25.1.2006 is as under:-

“1. The complaint U/s 28 r/w Item I of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971 stands allowed in terms of its prayer clause.

2. It is declared that the respondents have terminated the service of the complainant without

strict compliance of Section 25 (F) and 25 (G) of I.D. Act, 1947 r/w Rule 81 of the I.D. (Bom.) Rules, 1957 and committed unfair labour practice under Item I of schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971, therefore, he is entitled to reinstatement in service with continuity and back wages w.e.f. 15th January 2002 till the date of his reinstatement in it.

3. The respondents are directed to cease and desist from engaging in unfair labour practice under Item I of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971.

4. The respondents are also directed to reinstate the complainant in service with continuity and pay him back wages of the idle period *id est* w.e.f. 15th January 2002 to the date of his reinstatement in it.

5. The respondent is directed to pay Rs. 1,000/- to the complainant towards costs of litigation and bear its own.

6. The proceeding is closed.”

8. Admittedly, this order was confirmed by the Industrial Court, Akola and revision against the said order has been dismissed. The respondents did not dispute this fact. But it is stated that the applicant was re-appointed as per the decision taken

by the Government vide G.R. dated 16.10.2012 and this is not a disputed fact. The G.R. dated 16.10.2012 is placed on record at Page Nos. 55 to 59 (both inclusive). As per the said G.R., the Government has taken a decision to regularize the Labourers, who were continuously working in between 1.11.1994 to 30.6.2004, i.e., at least 240 days in a year for a continuous period of five years. The said G.R. shows that the Van Majurs (Forest Labourers) were to be absorbed who fulfill the conditions of the said G.R., subject to certain conditions. Such condition includes submitting of an undertaking in the form of affidavit and it was specifically mentioned in the said undertaking that the applicant will be treated as regular employee i.e. Van Majur from 16.10.2012 and that he will not claim any arrears for previous period.

9. As per the order passed in Complaint Case No. 11/2002 by the Labour Court, Akola, termination of the applicant was held illegal and he was held entitled to be reinstated in service with continuity and back wages w.e.f. 15.1.2002 till the date of his reinstatement. The applicant was reinstated on 6.8.2010 as Labour.

10. The applicant in this case is claiming that the respondents be directed to release the regular pension and

pensionary benefits from the date of his reinstatement alongwith interest as per Resolution dated 22.11.1994 and 26.1.1996. From the record, however, it seems that the order of reinstatement has been passed on 15.2.2013 on the basis of G.R. dated 16.10.2012. A copy of the said G.R. dated 16.10.2012 is placed on record, which shows that the Government has taken a policy decision to absorb Forest Labourers who had worked in between 1.11.1994 to 30.6.2004 periodically i.e. for 240 days in a year. The learned P.O. also submitted that in view of the said absorption / regularization, the applicant has given an undertaking that he will not claim any arrears for earlier service and will take back all the litigations and will not even claim the benefits granted to him by the order of the Court. The relevant affidavit is placed on record at page Nos. 61 & 62. It is to be noted that this affidavit is taken on a stamp dated 9.11.2012 and the affidavit also bears the date as 9.11.2012, in which there is a reference of G.R. dated 16.10.2012. The undertaking given by the applicant is as under:-

“मी वनविभागामध्ये शासन सेवेत वनमजूर म्हणून नियमित होण्याकरिता दाखल केलेल्या सर्व तक्रारी, प्रकरणे, याचिका मागे घेतले असून न्यायालयाचे निर्णयानुसार माझ्या बाजूने लागलेल्या निकालाप्रमाणे शासनाकडे कोणतीही मागणी करणार

नाही किवा त्याबाबत कोणतीही दावा, तक्रार करणार नाही. करिता प्रतिज्ञापत्र लिहून दिले आहे ते बंधनकारक आहे.”

11. According to the learned P.O., the applicant cannot claim any arrears or regularization as per the earlier order passed by the Labour Court, Akola, since he has given such undertaking for absorption in the service.

12. It is material to note that, the order in the Complaint filed by the applicant before the Labour Court, Akola i.e. U.L.P. No. 11/2002 was passed on 25.1.2006 and the respondents were directed to reinstate the applicant in service with continuity and back wages w.e.f. 15.1.2002 till the date of his reinstatement. The respondents were also directed to reinstate the applicant in service with continuity and to pay him back wages of the idle periods w.e.f. 15.1.2002 till the date of reinstatement. Admittedly, revision filed against this order has been dismissed and this order has become final. Accordingly the applicant has been reinstated in service on 6.8.2010, i.e. long back prior to the G.R. of absorption dated 16.10.2012. It, therefore, cannot lie in the mouth of the respondents that the applicant will not be entitled to claim arrears as has been granted by the Labour Court, Akola. The applicant should have, in

fact, been considered for regularization of his service as a Forest Labour as per order of the Labour Court, Akola and his service should have been treated as continuous service and considering this aspect, the applicant should have been considered for claim of pension and other pensionary benefits, if admissible to him. The applicant's case, therefore, should have been considered independently on the basis of the order passed by the Labour Court, Akola and it should have been decided as to whether his services could be treated as regular one in view of the order passed by the Labour Court, Akola. In any case, it was not legal on the part of the respondent authorities to deny the claim which has been granted in favour of the applicant by the Labour Court, Akola. There is absolutely no reason as to why the back wages for the period from 15.1.2002 to 6.8.2010 has not been granted to the applicant. It is material to note that, the applicant is a Labour and he might have given an undertaking, expecting that he will get regularization in the service and arrears. Merely on such an undertaking, his legitimate claim which has been granted by the Labour Court, Akola cannot be denied to him. Hence, the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to release the back wages of the applicant for the period from 15.1.2002 till 6.8.2010, i.e. till the date of his reinstatement s per order of the Labour Court, Akola in U.L.P. Complaint Case No. 11/2002 on 25.1.2006.
- (iii) All the arrears shall be paid to the applicant within a period of three months from the date of this receipt of order, failing which, the applicant will be eligible to claim interest on the said amount as per admissible rates.
- (iv) The applicant's services shall be treated as continuous service w.e.f. 15.1.2002.
- (v) On the basis of the order passed by the Labour Court, Akola in U.L.P. Complaint Case No. 11/2002 on 25.1.2006, services of the applicant shall be treated as continued in service and the respondents shall take a decision as regards entitlement of the

applicant for pension and pensionary benefits as may be admissible under the rules.

(vi) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)
19.4.2018.

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