Case Citation: (2026) ibclaw.in 5071 HC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5852 OF 2010

1. Sub Divisional Officer,
Public Works Sub Division, Malkapur,
District Buldhana.

2. The Executive Engineer
Public Works Department, Khamgaon,
District Buldhana. ... PETITIONERS

V E R S U S

Devidas Kisan Sirsat
Aged about : 45 Years; R/o Nandura,
Tahsil Nandura, District Buldhana. ... RESPONDENT

Ms. D. V. Sapkal, AGP for Petitioners/State.
Mr. M. V. Rai, Advocate for Respondent.

CORAM : PRAVIN S. PATIL, J.
DATE : AUGUST 24, 2026.

JUDGMENT

. Heard Ms. D. V. Sapkal, learned AGP for the Petitioners and Mr. M. V. Rai, learned Counsel for the Respondent.

2. In the present Petition, challenge is to the Judgment and Award dated 19/4/2010 passed by the Labour Court, Buldhana in Reference I.D.A. No. 27/2006, by which, the Labour Court directed the Petitioners to reinstate

the Respondent/Workman in service. The contention of the Petitioners is that the learned Labour Court committed an error in granting reinstatement despite the fact that Respondent/Employee failed to establish on record the unexplained delay of ten years and further failed to prove continuous service of 240 days.

3. In this matter, contention of the Respondent/Employee before the Labour Court in his statement of claim is that he has worked continuously as a Labourer with the Petitioner/Department from the year 1981 to 1/12/1996. He was removed by the Petitioners on 1/12/1996 by oral order. It is further his case that the junior employees were continued in the establishment and no seniority list was published. Hence, according to him, there was non-compliance of Sections 25 and 25(g) of the Industrial Dispute Act, 1947.

4. On the point of delay, Respondent/Employee has stated that the Petitioner No.1 had given assurance to him that he would be taken back on work if the decision in the case of Ramesh Wakode was in his favour. Therefore, he has not taken any legal action in the matter. According to him, Ramesh Wakode had been taken on work and immediately within a period of three months, he has approached to the Conciliation Officer. Therefore,

considering this fact, no delay has been caused to approach before the Conciliation Officer in the matter.

5. The present Petitioners have denied the fact that there was a continuous work provided to the Respondent/Employee. The statement of the Respondent that junior persons than him namely, Arjun Tayade, Ramesh Wankhede etc. are continued in employment, was also denied. So also the assurance, which was alleged to have been given to the Respondent that after the decision of the case of Ramesh Wakode he would be reinstated, is also denied.

6. In the light of this submissions, the Respondent/Employee examined himself before the Labour Court. He has been cross-examined by the Petitioners. On behalf of the Petitioners, no one has entered into the witness-box. In this background, the learned Labour Court has decided the Reference IDA No. 27/2006 by the impugned order dated 19/4/2010. The learned Labour Court, by considering the contention of the parties, by the impugned order dated 19/4/2010, answered the reference in affirmative and directed the Respondent/Employee to be reinstated in service.

7. The Petitioners have challenged the said Judgment by way of present Petition. According to the Petitioners, the Reference was preferred before the Labour Court after a period of ten years without explaining the delay and the Labour Court wrongly entertained such complaint. It is further pointed out on the basis of chart, which they have prepared and enclosed with the Petition, that the Respondent/Employee has not worked continuously for a period of 240 days in all the years from 1985 to 1994. Therefore, the Employee, who has not worked for a period of 240 days in any preceding year is not entitled for reinstatement and further not entitled to claim the benefit under Section 25-G of the Industrial Dispute Act.

8. The Respondent/Employee has strongly opposed the present Petition. According to him, he has given the specific reason for delay by stating that the assurance was given by the Petitioner No.1 that after decision in the case of Ramesh Wakode, his case will be considered, and therefore, he has not filed the proceeding. Therefore, this aspect needs consideration in the matter. It is further stated that the chart, which is placed on record showing the details of work rendered by the Respondent from the year 1985 to 1994 was never produced before the Labour Court, and therefore, same cannot be accepted first time in the present Petition.

9. In the light of submission made by the learned Counsel for both sides, it would be relevant to consider the fact that no proper explanation has been given by the Respondent/Employee while explaining the delay in his statement of claim. The record no where shows that when the complaint of Ramesh Wakode was decided and in which proceeding reinstatement of said Ramesh Wakode was directed. So also there is no statement of any other person including Ramesh Wakode before the Court stating that the Respondent was in his contact and he has informed about the same to the Respondent. Therefore, in my opinion, issue of delay is not properly dealt with in the present matter. The Respondent/Employee, in order to explain the delay of ten years, must establish some cogent evidence on record.

10. In respect of the finding that the Respondent/Employee has rendered continuous service from the year 1987 to 1996 by drawing adverse inference due to non-production of documents by the Petitioners seems to be not justified, particularly, when the fact came before this Court that since 1985 to 1994 the Respondent/Employee has never shown to have worked for 240 days in any of the preceding year.

11. It is pertinent to note that as per the law laid down by the Hon'ble

Supreme Court of India in the case of ***Range Forest Officer V/s S. T. Hadimani, (2002) 3 Supreme Court Cases 25***, it is made clear that it is for the Claimant to lead evidence to show that he had infact worked for 240 days in the year preceding his termination. Filing of the affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, infact worked for 240 days in a year.

12. It is further not clear from the record that the post, on which the Respondent had worked, was the sanctioned post and same was not filled in by the Petitioner/Department while engaging the Respondent on daily wages. This aspect is also needs to be testified in the present matter.

13. It would be relevant to note that in respect of burden of proof and onus, it is well settled position and it has been consistently held by this Court as well as Supreme Court of India that burden of proving fact always lies upon the person who substantially asserts it and not upon the person who denies it. Therefore, both the parties are required to tender cogent evidence, by stepping into the witness-box with their respective case and establish their stand before the Labour Court. However, in the present case, Petitioner/Department failed

to establish their stand by entering into the witness-box. So also not produced the documents, which were mandatory for them to produce, if the record was available with them.

14. In the background of abovesaid factual position, in my considered opinion, all the issues raised in the present Petition needs to be re-considered by the Labour Court by granting opportunity to both the parties to lead their respective evidence. The Respondent/Employee shall also explain the delay and file the necessary documents in respect of his submission. The Petitioners shall also file all the relevant documents, on the basis of which, chart is prepared and established their case in reference proceeding. After examining the same, learned Reference Court shall decide the proceeding afresh and resolve the controversy involved in the matter. In view of above, following order is passed.

ORDER

1. Writ Petition is partly allowed.

2. The Judgment and Award dated 19/4/2010 passed by the Labour Court, Buldhana in Reference I.D.A. No. 27/2006 is quashed and set aside.

3. The Reference I.D.A. No. 27/2006 is restored on the file of Labour Court, Buldhana.

4. Both the parties are directed to appear before the Labour Court, Buldhana on 9th September, 2026.

5. The Labour Court is directed to decide the reference proceeding within a period of three months from the date of appearance of the parties.

6. Rule is made absolute in above terms. No order as to costs.

[PRAVIN S. PATIL, J.]

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