



Sayali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4422 OF 2022

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DEEPAK
UPASANI

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The Executive Engineer,
Pune Zilla Parishad (R & B),
Yashwantrao Chavan Bhawan,
Pune

... **Petitioner**

V/s.

Shivaji Kisan Danawale
Previously Residing at Post Bare- Sind,
Taluka Bhor, District- Pune.
Currently Residing at c/o Shri. Dixit,
Secretary, Pune Zilla Majdoor Sabha,
54, Budhwar Peth, Pune 411 002.

... **Respondent**

**WITH
WRIT PETITION NO. 9197 OF 2018**

The Executive Engineer ... **Petitioner**

V/s.

Suresh Ramchandra Sonawane ... **Respondent**

**WITH
WRIT PETITION NO. 12256 OF 2019**

The Executive Engineer ... **Petitioner**

V/s.

Popat Dattatraya Sonawane ... **Respondent**

**WITH
WRIT PETITION NO. 9199 OF 2018**

The Executive Engineer ... **Petitioner**

V/s.

Sopan Baburao Roman ... **Respondent**

WITH



WRIT PETITION NO. 9895 OF 2018

The Executive Engineer ... Petitioner
V/s.
Kausalaya Nivrutti Gaikwad ... Respondent

**WITH
WRIT PETITION NO. 9893 OF 2018**

The Executive Engineer ... Petitioner
V/s.
Dhondabai Balu Gole ... Respondent

**WITH
WRIT PETITION NO. 9892 OF 2018**

The Executive Engineer ... Petitioner
V/s.
Dinkar Hari Biramane (Since Deceased
thr. Lrs) Shankar Hari Birhamane ... Respondent

**WITH
WRIT PETITION NO. 12261 OF 2019**

The Executive Engineer ... Petitioner
V/s.
Tukaram Appaji Badak ... Respondent

**WITH
WRIT PETITION NO. 12257 OF 2019**

The Executive Engineer ... Petitioner
V/s.
Indubai Dinkar Bodake ... Respondent

**WITH
WRIT PETITION NO. 12258 OF 2019**

The Executive Engineer ... Petitioner
V/s.
Bhanudas Vishnu Awale ... Respondent

**WITH
WRIT PETITION NO. 12259 OF 2019**

The Executive Engineer ... Petitioner



V/s.
Narayan Dagadu Kindre (Since Decd.)
Thr. Lrs Kalawati Narayan Kindre ... Respondent

WITH
WRIT PETITION NO. 12260 OF 2019

The Executive Engineer ... Petitioner
V/s.
Suman Baburao Kamble ... Respondent

WITH
WRIT PETITION NO. 9198 OF 2018

The Executive Engineer ... Petitioner
V/s.
Sudam Shirang Sonawane ... Respondent

WITH
WRIT PETITION NO. 9894 OF 2018

The Executive Engineer ... Petitioner
V/s.
Anand Yashwant Danawale ... Respondent

WITH
WRIT PETITION NO. 10843 OF 2018

The Executive Engineer ... Petitioner
V/s.
Vitthal Sampat Mohite ... Respondent

WITH
WRIT PETITION NO. 11244 OF 2018

The Executive Engineer ... Petitioner
V/s.
Nathaba Kondiba Gulamkar (deceased)
Wife – Tarabai Nathaba Gulamkar ... Respondent

Mr. Ravindra S. Pachundkar, for petitioner.
Mr. Nitin A. Kulkarni, for respondent.



CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 30, 2026

PRONOUNCED ON : MAY 7, 2026

JUDGMENT:

1. Writ Petition Nos.9894 of 2018, 10843 of 2018 and 11244 of 2018 are not on board. By consent, taken on board for hearing and final disposal.

2. Since the Court finds that a common question of law arises for consideration in the present group of writ petitions, it is considered appropriate, to dispose of all the petitions by this common judgment and order. For the sake of convenience and clarity, Writ Petition No. 4422 of 2022 is treated as the lead matter, and the facts therein are referred to as illustrative of the controversy involved in the connected petitions.

3. By the present writ petitions instituted under Articles 226 and 227 of the Constitution of India, the petitioners have invoked the supervisory and writ jurisdiction of this Court, calling in question the legality, correctness, and propriety of the judgment and Award dated 03rd August 2017, rendered by the learned Labour Court, Pune in Reference (IDA) No. 224 of 1991. The challenge is essentially directed against the findings recorded and the relief granted by the Labour Court in exercise of its adjudicatory powers under the Industrial Disputes Act, 1947.

4. The facts giving rise to the present petitions, stated in brief, indicate that the learned Labour Court, Pune partly allowed



Reference (IDA) No. 224 of 1991 and directed the petitioner to pay a lump sum compensation of Rs. 3,00,000/- to the respondent second party, towards monetary benefits for the remainder of his life, along with costs quantified at Rs. 5,000/-. The petitioner, namely Pune Zilla Parishad, is an instrumentality functioning under the directions and control of the State of Maharashtra, primarily entrusted with the execution of developmental and infrastructural works in rural areas. It is the case of the petitioner that, whenever construction work relating to roads was undertaken, the concerned Assistant or Junior Engineer of the respective area engaged daily rated workers who voluntarily offered themselves for such work. This engagement was stated to be in furtherance of a governmental policy aimed at providing employment opportunities at the village level. The said work was executed through daily rated labourers on muster roll, and upon completion of the work, the engagement of such workers automatically came to an end. It is further contended that such engagement was purely on a daily wage basis, contingent upon availability of work, and did not give rise to any employer-employee relationship in the strict legal sense between the petitioner and the said workers. The conditions governing such employment were regulated by the "Kalelkar Award," an award published under Section 17 of the Industrial Disputes Act, 1947.

5. In terms of the Kalelkar Award, specific provisions were made in respect of daily rated workers, stipulating that those who had completed five years of continuous service, with not less than 240 days of work in each year, would be considered for absorption



on the regular temporary establishment, subject to approval by the State Government, upon which they would become entitled to permanency benefits. The expression “continuous service” was understood to mean completion of more than 240 days of work in each year for a continuous period of five years. In the present case, the respondent second party was engaged as a daily rated worker in connection with the construction of the Bhor–Pasure Road during the year 1985, and was paid wages on muster roll basis. The muster roll records for the period between 1984 and 1989, as placed before the Labour Court, indicate that the respondent had worked for varying number of days in each year, namely 43 days in 1984, 67 days in 1985, 231 days in 1986, 53 days in 1987, 110 days in 1988, and 71 days in 1989. These figures were relied upon to demonstrate the nature and extent of engagement of the respondent during the relevant period.

6. The respondent second party thereafter raised an industrial dispute by filing a complaint before the Conciliation Officer, alleging that his services had been illegally terminated by the petitioner and seeking reinstatement with full back wages. Upon failure of conciliation, the learned Deputy Commissioner of Labour, Pune, by order dated 05th July 1991, referred the dispute for adjudication to the Labour Court, Pune under Section 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947, treating it as a dispute falling within the ambit of Section 2-A of the said Act. The reference framed for adjudication required the Labour Court to determine whether the termination of services of the respondent on 09th December 1989 was legal and justified,



and if not, whether he was entitled to reinstatement with continuity of service and full back wages for the intervening period.

7. The respondent second party filed his Statement of Claim before the Labour Court on 29th August 1991, wherein it was specifically admitted that he had commenced working with the petitioner from the year 1985 and had been engaged as a daily rated worker for a period exceeding four years, receiving wages at the rate of Rs. 25/- per day. It was his case that his services were orally terminated on 09th December 1989 by the Deputy Engineer on the ground that the muster roll was closed. The petitioner, in its Written Statement dated 04th August 1992, contested the claim by asserting that the nature of work undertaken was not continuous throughout the year, but was dependent upon workload, availability of funds, and seasonal conditions, particularly noting that work came to a complete standstill during the rainy season. It was further contended that the respondent did not satisfy the eligibility criteria prescribed under the Kalelkar Award for grant of permanency benefits, and that work was allotted to him only as and when available. The allegation of oral termination was specifically denied. The petitioner also asserted that the provisions of Section 25F of the Industrial Disputes Act, 1947 were not attracted to the facts of the present case.

8. By a common Award dated 05th October 1998, rendered in respect of 16 workers including the respondent herein, the Labour Court, Pune rejected the claims on the ground that the workmen were engaged on a casual and daily wage basis and had not



completed the requisite 240 days of continuous service in each year for a continuous period of five years. The said Award was subsequently challenged, and upon final hearing before this Court on 19th August 2016, it was observed that the Labour Court had relied upon muster rolls and attendance records which were not duly proved by the petitioners. In view thereof, this Court set aside the Award dated 05th October 1998 and remanded the matter to the Labour Court, Pune for fresh adjudication on merits, in accordance with law, granting liberty to the parties to lead evidence and prove the documents placed on record.

9. Upon remand, the learned Presiding Officer, Labour Court No. 3, Pune, by the impugned Award dated 03rd August 2017 in Reference (IDA) No. 224 of 1991, partly allowed the reference and directed the petitioner to pay a lump sum compensation of Rs. 3,00,000/- to the respondent second party as monetary benefit for the remainder of his life. It is this Award which is the subject matter of challenge in the present writ petitions, the petitioners contending that the same is unsustainable in law and liable to be quashed and set aside.

10. Mr. Ravindra Pachundkar, learned Advocate appearing on behalf of the petitioner, submitted that the learned Labour Court, Pune failed to properly appreciate the governing framework applicable to daily rated employees. It was contended that, as per the settled policy reflected in the Kalelkar Award, only those daily wage workers who have completed 240 days of work in each year for a continuous period of five years are eligible to be taken on the temporary establishment and, upon obtaining requisite sanction



from the State Government, to be conferred permanency. According to the learned counsel, the Labour Court ought to have duly considered that the engagement of the respondent was purely contingent upon availability of work and that work was, in fact, offered to him whenever such work existed. It was further urged that the Zilla Parishad operates within fixed norms governing regularisation of daily rated workers, and in the absence of the respondent fulfilling such prescribed conditions, no right could be claimed. The Labour Court, it was submitted, failed to properly evaluate the Inspection Report, muster rolls, and statements indicating the actual number of days worked by the respondent, which were material for determining his entitlement.

11. Elaborating further, the learned counsel submitted that the respondent had entered the witness box on 20th June 1997 and was subjected to cross-examination. In the course of his evidence, the respondent admitted that he had joined the services of the petitioner in April 1985. He further acknowledged that one Rairikar Mistry used to record daily attendance in the muster roll and that the signatures of the workers were obtained therein at the time of disbursement of wages. It was also admitted by the respondent that, at the time of deposing in the year 1997, he was engaged in labour work for his livelihood. Significantly, in cross-examination, the respondent conceded that he was not a permanent employee of the Pune Zilla Parishad. Placing reliance on these admissions, the learned counsel submitted that the findings recorded by the Labour Court are unsustainable and that the impugned judgment and Award deserve to be quashed and set



aside.

12. Per contra, Mr. Nitin A. Kulkarni, learned counsel appearing on behalf of the respondent, opposed the petition and submitted that the material on record had not been properly appreciated by the petitioner. It was contended that the second party had produced an Inspection Report prepared on the basis of available muster rolls in Reference (IDA) No. 223 of 1991, which indicated that the muster rolls for the entire period from 1981 to 1989 were not available on record. This position, according to the learned counsel, was contrary to the stand of the first party that all muster rolls for the said period were available. It was further pointed out that the statement produced by the first party itself indicated that the respondent had worked for 43 days in 1984, 67 days in 1985, 231 days in 1986, 53 days in 1987, 110 days in 1988, and 71 days in 1989, thereby demonstrating the extent of his engagement.

13. The learned counsel for the respondent further submitted that the most crucial evidence in the present matter pertains to the muster rolls in Reference (IDA) No. 223 of 1991, on which both parties have placed reliance. Upon scrutiny of the said muster rolls, it emerges that they pertain to the period from 29th September 1981 to 26th March 1989. However, several periods are conspicuously absent, namely from 21st November 1981 to 23rd April 1982, from 25th May 1982 to 04th March 1983, during April 1983, from 30th January 1987 to 16th June 1987, from 19th August 1987 to 05th November 1987, from 12th June 1988 to 31st July 1988, and from 26th March 1989 to 09th December 1989. It was also pointed out that certain muster rolls are missing in serial



sequence. According to the respondent, he was engaged on the Bhor-Pasure Road, and the muster rolls pertaining to such work for the relevant period are not fully available. The first party, it was urged, has relied only on the oral evidence of its witnesses, namely Mr. Malunde and Ms. Naikwadi, while taking the stand that the original muster rolls were destroyed in a fire. It was further submitted that the last available muster roll is dated 27th March 1989, and as per the entries therein, the respondent had worked for 71 days in the year 1989 up to that date. Consequently, the muster rolls for the period from 27th March 1989 till 09th December 1989, which is the date of alleged termination, are admittedly not on record.

14. It was further submitted that a comparative reading of the statements and the Inspection Report in Reference (IDA) No. 223 of 1991 reveals discrepancies in the total number of days of work attributed to the respondent. Taking into account the fact that the respondent's services came to be terminated in the year 1989, the prolonged litigation that ensued thereafter, including dismissal of the reference, its challenge before this Court, and subsequent remand, as well as the considerable lapse of time during which the respondent pursued the proceedings from 1991 for a period of about 26 years, it was contended that the respondent had lost his productive years in prosecuting the dispute. It was thus urged that the grant of lump sum compensation of Rs. 3,00,000/- by the Labour Court was justified as a measure to enable the respondent to sustain himself in the remaining part of his life. It was further submitted that the award of simple interest at the rate of 12% per



annum from the date of the Award till realization, along with costs of Rs. 5,000/-, was also warranted in the facts of the case. On these grounds, the learned counsel prayed that the present writ petitions be dismissed.

REASONS AND ANALYSIS:

15. I have given careful consideration to the rival submissions advanced on behalf of both sides.

16. The evidence led by the respondent require close appreciation. It is correct that in his deposition he clearly stated that he joined service sometime in April 1985. He also stated that attendance was recorded in muster roll and that signatures were taken at time of payment. This part of evidence shows that system of record keeping was in existence and that his presence on work was being noted. Further, he admitted that he was not permanent employee. At first sight, this admission may appear to weaken his claim. It does reduce the strength of any claim for permanency. But it cannot be stretched beyond its proper limit. From these very admissions, one important fact becomes clear. There was a working arrangement between parties. He was engaged and he worked for wages on daily basis over period of time. Therefore, even if he was not permanent, it does not follow that his disengagement cannot be examined by Court. A daily rated worker also has certain protection in law. If his service is brought to end in arbitrary or unfair manner, he can question it. Thus, the admission of non permanency cannot automatically defeat his grievance. The Labour Court, therefore, was justified in separating the question of



permanency from question of termination. Both are different issues and must be examined independently.

17. The reliance placed by the petitioner on muster rolls and statement of working days also needs scrutiny. At first glance, documentary material gives impression of calculation of days worked. However, when the record is closely examined, certain serious deficiencies become visible. The muster rolls are not complete. Some periods are entirely missing. Some pages are not available. Serial order is not properly maintained. Both the Labour Court and this Court at earlier stage have noticed this defect. The records do not cover entire period from 1981 to 1989. The last available muster roll is dated 27th March 1989. After that date, till 09th December 1989, which is crucial period, no muster roll is placed on record. This absence is significant. In a case where calculation of days is issue, incomplete record creates doubt. The employer is expected to maintain such documents carefully. When such record is not produced in full, it becomes difficult for Court to accept the employer's version without reservation. The petitioner cannot rely on deficiency in respondent's proof while itself withholding or failing to produce complete record. In such circumstances, strict proof is not possible. The Court has to rely on available material and draw reasonable inference. What is required is reasonable satisfaction on basis of evidence.

18. The argument of the petitioner that there was no termination because work was given whenever available also requires careful consideration. It is true that work of such nature may depend upon availability and season. This submission has some substance. But it



does not fully answer the case. If a worker has been engaged for several years and then suddenly stops getting work, the employer is expected to explain the reason. Silence on this aspect creates doubt. The respondent has specifically stated that he was orally terminated on 09th December 1989. The petitioner has denied this. But such denial is not supported by complete documentary record. Since muster rolls for relevant period are not produced, the Court is left with incomplete picture. In such situation, neither version can be accepted in full without caution. The respondent's case is not proved in strict sense. At the same time, it is not disproved. There is a grey area. In such grey area, Court must rely on probabilities and surrounding circumstances rather than strict proof alone.

19. The submission of the respondent regarding inconsistency between inspection report and statement of working days also deserves to be noticed. There appears to be variation in figures. This shows that the record is not consistent. However, this inconsistency cannot be treated as fatal. In industrial matters, records are imperfect. Workman usually depends on documents maintained by employer. If such documents are incomplete or inconsistent, the workman cannot be blamed entirely. Therefore, the Court must look at broader picture. In present case, it appears probable that the respondent was engaged as daily rated worker over number of years on road construction work. It is not established that he completed requirement of continuous 240 days for five years. But it is also not established that he was not working or that he voluntarily left. Thus, situation arises where part of his



case is acceptable and part is not. In such situation, partial acceptance becomes necessary.

20. The long duration of litigation also has significant bearing on relief. The dispute began in 1991. It continued for many years. The matter was decided once, then challenged, then remanded, and decided again. By the time final award came in 2017, almost entire working span of respondent had passed. In such circumstances, directing reinstatement would not be practical. It would also not serve real purpose. The Labour Court appears to have taken note of this reality. Instead of granting reinstatement, it awarded lump sum compensation. This shows that the Labour Court was conscious of changed situation. Compensation is given as substitute remedy when original relief becomes impracticable. Considering long delay and age of respondent, such approach appears reasonable and justified.

21. The criticism of the petitioner that the entire claim ought to have been rejected cannot be accepted. The record is not one-sided. It contains deficiencies on both sides. The respondent has not proved case of permanency. The petitioner has not proved complete absence of continuous engagement. In such mixed situation, a balanced view is required. The Labour Court has adopted such balanced approach. It has not granted permanency. It has not ordered reinstatement. It has only granted compensation. This indicates that it has weighed evidence carefully. The approach cannot be said to be arbitrary. It is based on equitable consideration and available material. Therefore, interference with such finding is not warranted.



22. In view of the foregoing discussion and upon overall consideration of the material on record, the following order is passed:

- (i) The writ petitions stand dismissed;
- (ii) The impugned Judgment and Award dated 3rd August 2017 passed by the Labour Court, Pune in Reference (IDA) No. 224 of 1991, 223 of 1991, 230 of 1991, 234 of 1991 , 236 of 1991, 238 of 1991 is upheld;
- (iii) The petitioner shall comply with the Award, if not already complied, within a period of eight weeks from the date of this order;
- (iv) In the event of failure to comply within the stipulated period, the amount shall carry interest at the rate as awarded by the Labour Court, till realization;
- (v) Rule is discharged. No order as to costs.

(AMIT BORKAR, J.)