

(2007) 04 RAJ CK 0045
In the Rajasthan High Court

Chairman, Municipal Board and Another	APPELLANT
Vs	
Mahavir Prasad Sharma and Another	RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25, 25F, 25G
Penal Code, 1860 (IPC) — Section 226

Citation : (2007) 3 RLW 1999

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prem Shanker Asopa, J.—By this writ petition, the petitioner Municipal Board, Sri Madhopur seeks to challenge the Award dated 26.4.2002 passed by the Labour Court No. 2, Jaipur in LCR No. 866/1998 whereby retrenchment of the respondent-workman w.e.f. 3.5.1993 has been held to be unjustified and illegal and the workman has been ordered to be reinstated in service with continuity of service as well as full back wages.

2. Briefly stated, the relevant facts of the case, as per the workman, are that the respondent-workman was appointed on 1.7.1991 as Naka Guard-cum-Electrician and thereafter, he continuously worked upto 3.5.1993 and has completed 240 days. The impugned retrenchment order has been passed in utter violation of mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (in short "the Act")- The workman further raised the grievance of violation of Section 25G and 25H of the Act by stating that persons junior to him have been continued and further he has not been given an opportunity of fresh employment.

3. Petitioner Municipal Board filed reply to the statement of claim wherein it was submitted that the workman was kept on daily wages on 29.7.1991 and was paid from contingency fund. It was further submitted that he was called as and when there was necessity and paid daily wages. It was also denied that the workman has worked up to 3.5.1993.

4. Both the parties led evidence before the Labour Court.

5. Workman filed his affidavit on which he was cross-examined by the Management.

6. Labour Court after considering the evidence, came to the conclusion that the workman was appointed on 1.7.1991 and the Management has not produced the attendance register and muster roll therefore, presumption could be drawn in favour of the workman. The Labour Court has also considered that the Management has not produced any documentary evidence in rebuttal. After drawing the said presumption and placing the burden of proof on Management and considering the examination and cross-examination of the workman wherein he has been able to establish his date of appointment as 1.7.1991 and date of his retrenchment as 3.5.1993 the Labour Court after considering the law on the subject on the date of Award came to the conclusion that the workman has completed 240 days in 2002 and it was obligatory on the part of the Management to produce attendance register, muster roll as well as payment register but since the same have not been produced, therefore, the same will amount to suppression of relevant material and therefore, statement of the workman is correct.

7. Submission of counsel for the petitioner Municipal Board is that the Labour Court has committed gross error of law in not considering the settled position of law that now burden is upon the workman to prove by cogent evidence that he had worked for 240 days in the last calendar year. Mere assertion in the statement of claim or the affidavit of the workman is not sufficient. Mr. K.N. Gupta placed reliance on a Supreme Court judgment in R.M. Yellatti Vs. The Assistant Executive Engineer, wherein many other earlier judgments of the Supreme Court have also been considered. Para 17 of the aforesaid judgment is relevant and the same is as under:

17. Analyzing the above decision of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings u/s 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of

discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muter rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments, lay down the basic principle, namely that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case.

8. Supreme Court in the above mentioned case has settled the position of law that mere production of the affidavit by the workman is not sufficient and non-production of the record by the Management will not allow the Court to draw an adverse inference against the Management. Ultimately, the same would depend on facts of each individual case. It appears that in the instant case, no record has called by the Labour Court and without calling for the record, the Municipal Board has been held guilty of suppression of relevant material.

9. In view of the above mentioned facts and circumstances of the case, impugned Award dated 26.4.2002 of the Labour Court is liable to be set aside so far as issue with regard to completion of 240 days in the preceding last year by the workman is concerned and the case is liable to be remanded back to the Labour Court for allowing both the parties to produce additional evidence on the said issue.

10. Resultantly, the writ petition is allowed, the impugned Award dated 26.4.2002 passed by the Labour Court is set aside and the case is remanded back to the Labour Court for deciding the issue of completion of 240 days in the preceding last calendar year by the workman after allowing both the parties to adduce additional evidence. The Labour Court is further directed to decide the issue within a period of three months and pass fresh award.

11. Both the parties are directed to appear before the Labour Court No. 2, Jaipur on 30th May, 2007.