
(2002) 09 AP CK 0078
In the Andhra Pradesh High Court
Case No : W.A. No. 991 of 2002

Deputy Executive Engineer, I and P, RC Department and
Another

APPELLANT

Vs

Padamati Balaramiah and Another

RESPONDENT

Date of Decision : 09-09-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2002) 3 APLJ 70 : (2003) 2 LLJ 396

Hon'ble Judges : S.R. Nayak, J;Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : G.P, for the Appellant; Ajay Kumar, G.P., for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The 1st respondent workman, complaining that though he had put in 240 days of continuous service in the establishment of the appellants herein, his services were terminated abruptly with effect from March 15, 1990 in breach of the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act), instituted I.D. No. 300 of 1990 in the Labour Court, Guntur. The I.D. was opposed by the appellants contending that the workman did not put in 240 days of continuous service as on March 15, 1990 in the previous year and therefore, the provisions of Section 25-F of the Act are not attracted. In support of the claim, the workman examined himself as WW. 1 and also examined two others, Mr. K. Venkataramaiah and Mr. Hussain as WW 2 and WW. 3 respectively and got marked Ex. W.1, the service certificate dated September 21, 1985 issued by the Assistant Engineer. WW. 2. On behalf of the appellants. Mr. L.K. Durgaprasada Rao was examined as M.W. 1 and Exs. M. 1 and M.2 were marked.

2. The learned Presiding Officer of the Labour Court, on consideration of oral and documentary evidence, came to the conclusion that the workman had put in 240 days of continuous service as on the date of his removal and, therefore,

termination of his services was in breach of the mandatory provisions of Section 25-F of the Act. So opining, the learned Industrial Judge, by his award-dated July 3, 1997 directed reinstatement of the workman in service with continuity of service but without back wages. The appellants herein, being aggrieved by the said award of the Industrial Judge, filed W. P. No. 13198 of 1998. The learned single Judge, though seems to have agreed with the contention of the learned GP that the workman did not produce any. documentary evidence to prove that he had put in 240 days of continuous service in the establishment of the appellants as on March 15, 1990, did not think it appropriate to interfere with the award passed by the Industrial Judge on the ground that the Industrial Court has recorded a factual finding that the workman had put in 240 days of continuous service as on the date of removal i.e. March 15, 1990 and consequently dismissed the writ petition by order dated February 19, 2002. Hence this appeal by the appellants.

3. We have heard the learned Government Pleader for Irrigation for the appellants-Department and Mr. Challa Ajay Kumar for; the 1st respondent-workman. The learned GP contended that the learned Presiding Officer of the Labour Court as well as the learned single Judge have erred in law in opining that the workman's services were terminated in breach of the mandatory provisions of Section 25-F of the Act. The learned GP would maintain that there was absolutely no scope for the Industrial Court to apply the provisions of Section 25-F of the Act to the facts of this case, because, there was no semblance of any legal evidence even to remotely establish that as on March 15, 1990, the workman had put in 240 days of continuous service; On the other hand, learned counsel for the 1st respondent-workman would contend that the factual findings recorded by the Labour Court cannot lightly be interfered with by this Court in exercise of the power under Article 226 of the Constitution and, therefore, no exception can be taken to the order made by the learned single Judge.

4. It is true that the question whether the workman had put in 240 days of continuous service as on March 15, 1990 or not is undoubtedly a pure question of fact and the finding recorded by the the Labour Court on such a question cannot lightly be interfered with by the reviewing Court under Art, 226 of the Constitution unless it finds that the finding so recorded is ex-fade perverse or based on no evidence. The Court cannot go into the adequacy or sufficiency of the evidence also. Therefore, the only question that falls for our consideration and decision is whether there is some legal evidence to sustain the finding that on March 15, 1990, the workman had put in 240 days of continuous service. In our considered opinion, the answer should be in the negative. None of the documents produced by the workman before the Labour Court would go to show that he had put in 240 days of continuous service as on March 15, 1990. Ex. W. 1 dated September 21, 1985 is not a piece of evidence to prove the fact hat the workman had put in 240 days of continuous service as on March 15, 1990. Ex.W. 1 only says that the workman had put in a total service of 5 years and 2 months in several spells up to the year 1984. Simply because as on March 15, 1990 the

workman had put in more than 240 days of service in several spells during several years, but not in the immediately preceding previous year, that fact itself would not attract the provisions of Section 25-F of the Act. In order to attract the provisions of Section 25-F of the Act, what is required to be established is that as on the date of removal of the workman from service, the workman had put in 240 days, of continuous service in the previous year. The 1st respondent-workman has utterly failed to establish that fact. Added to this, the Labour Court has wrongly placed the burden on the appellants. The Presiding Officer, in the award has stated that the appellants did not produce records to establish that the workman did not work for 240 days continuously in the previous year as on March 15, 1990. In the first place, the burden is on the workman to prove that he had put in 240 days of continuous service in the previous year as on the date of his removal and secondly, the appellants cannot be called upon to prove a negative. On both counts, the very premise of placing the burden on the appellants by the Labour Court is erroneous and ex facie illegal.

5. In the result, the writ appeal is allowed: the order of the learned single Judge dated February 19, 2002 made in W.P. No. 13198 of 1998 is set aside and the writ petition is allowed. The award of the Labour Court in I.D. No. 300 of 1990 dated July 3, 1997 is quashed. No costs.