
(2008) 06 BOM CK 0096
In the Bombay High Court
Case No : Writ Petition No. 396 of 1996

Dnyandeo Sonvane

APPELLANT

Vs

The Executive Engineer, Sarvajani Bandkam Vibhag (Public Works Division) and The Hon'ble Judge, Labour Court

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25A, 25B, 25F

Citation : (2008) 4 ALLMR 652 : (2008) 118 FLR 813 : (2008) 3 LLJ 541 : (2009) 2 MhLj 132

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : V.D. Gunale, for the Appellant; D.V. Tele, AGP, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Borkar, J.—The petitioner is challenging rejection of Reference bearing IDA No. 2 of 1993 by the Judge, Labour Court, Latur on 28.04.1994.

2. Brief facts relevant for the matter are that the petitioner stated that he was employed as daily wager by respondent No. 1 in November, 1978. He was working on daily wages. Respondent No. 1 continued him by giving technical breaks from time to time till October, 1985. He was continuously working for more than 240 days in a year and for more than five years. Thereafter, without following any procedure and without giving any notice, the services of the petitioner were terminated orally from November, 1985. Therefore, the petitioner approached the Dy. Labour Commissioner, Aurangabad for conciliation and thereafter, the reference was filed in the Labour Court.

3. The Labour Court has held that the petitioner has failed to prove that he had completed 240 days of work in a year and as such he is not entitled to benefit of u/s 25-A of the Industrial Disputes Act, 1947 (ID Act). Therefore, his reference was rejected.

4. Before I proceed to the facts of the present case, I may refer to Section 25-F of the ID Act. It says that, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice. Moreover, the workman is also entitled to retrenchment compensation equivalent to 15 days' average pay.

5. According to learned advocate Shri V.D. Gunale neither notice was issued nor pay in lieu of notice was paid. No retrenchment compensation was paid. Section 25-B of ID Act defines continuous service and it lays down that a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or unauthorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. The workman can be said to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. So, what we have to see is whether in a year preceding the date of termination, the present petitioner has worked for 240 days. According to the petitioner, his services were terminated from November, 1985 onwards. So, the relevant period would be 1st November, 1984 to 31st October, 1985.

6. The judgment of the Labour Court clearly indicates that the petitioner had called for muster record for the period from 01.10.1978 to 31.10.1985 and also seniority list. It is stated that seniority list was not maintained and the entire record was not available. However, certain record was available and inspection was duly taken by the union representative of the petitioner. Thus, para 16 of the judgment shows that the union representative of the petitioner inspected the record since November, 1978 to July, 1979 and inspection report is at Exh.U-9. From the verification by the union representative the working days were found to be 51. The present petitioner has produced two certificates at Exh. "A" to this petition. One certificate shows that the petitioner has worked with respondent No. 1 for three months from May to July, 1982. As per second certificate, he worked for five months from November, 1987 to March, 1979.

7. In view of Section 25-B of the ID Act, we will have to consider period from November, 1982 to October, 1985 and that record was available as per observation made by the Labour Court in the second half of para 20. It is stated that as per record from 1983 onwards to July, 1984, the second party was not on duty. Since August 1984 till 01.12.1985 as per N.M.R. record the second party was engaged for some days. This total period is just only for 34 days. So, only for 34 days the petitioner was engaged as labourer between August 1984 to 01.12.1985. In this view of the matter, it cannot be said that the petitioner has

worked for 240 days in the year preceding the date with reference to which the calculation is to be made.

8. Learned AGP Shri Tele has relied upon a case of Chief Engineer, Ranjit Sagar Dam and Anr. v. Sham Lal AIR 2006 SCW 3574. It is stated therein that the burden of proving that workman had worked for 240 days or more in a year immediately preceding the termination is on the workman and not on the employer.

9. In this case the employer had given necessary inspection of his record available to the petitioner. He has also produced record from 1983 to July, 1984 in the Court. The petitioner failed to prove that he had worked for 240 days or more in a year immediately preceding his termination. In these circumstances, this Writ Petition cannot be allowed. The judgment of the Labour Court is upheld. The Writ Petition is dismissed. The parties to bear their own cost.

10. Rule discharged.