
(1997) 11 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 4625 of 1992

Executive Engineer, Mah. State Electricity Board, Kolhapur

APPELLANT

Vs

Pandurang Ganapati Shenvi

RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1997) 11 BOM CK 0035

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : Mrs. A.R.S. Baxi, for the Appellant;

Judgement

D.K. Deshmukh, J.—By this petition the petitioner challenges the order dated 24.8.1992 passed by the presiding officer, labour court, Sangli in the application I.D.A. No. 1.27 of 1986 Kolhapur and 22 of 1992, Sangli. That order was passed on an application filed by the respondent Pandurang u/s 33-C(2) of the Industrial Disputes Act, 1947. The respondent had filed that application claiming bonus for the year from 1983, 1984 and 1985 and also wages for leave period from 1.8.1982 to 22.8.1985. The undisputed position is that the respondent was in the service of the petitioner - Maharashtra State Electricity Board as an Operator First Grade and he was a permanent employee. It is also an admitted position that respondent submitted his resignation from that post which was accepted by the petitioner Board w.e.f. 23.8.1985. From 1.6.1982 to 22.8.1985 i.e., the date preceding the acceptance of the resignation of the respondent, he was admittedly not on duty. He was sending repeated applications for leave and despite letters issued by the Board asking him to rejoin the duties, the respondent continued to be absent from duty till his resignation was accepted. The labour court has held that the respondent was entitled for the wages for the period from 1.6.1982 to 22.8.1985 and he was also entitled to bonus for the years 1983, 1984 and 1985.

2. The learned counsel appearing for the petitioner Board urged before us that

the labour court itself has observed in paragraph 6 of its order that some of the leave applications filed by the respondent were granted and some were rejected. She urged that the labour court had itself observed that from 1.6.1982 to 10.6.1982 the respondent was on medical leave. On 29.6.1982 he again applied for extension of that leave till 25.7.1982. It is further observed that on 1.8.1982 the Executive Engineer issued a notice to him asking him to join the duties immediately. However, the respondent did not rejoin the duties and instead he continued sending leave applications and remained absent. The learned counsel further urged that before the labour court, the petitioner Board had relied on leave regulations which clearly showed that an employee of the board cannot remain absent from duty and go on leave for a period of more than 30 days continuously. In the submission of the learned counsel, therefore, the labour court was absolutely not justified in treating the period from 1.6.1982 to 22.8.1985 as duty and directing the board to make payment for that period, specially when it is an admitted position that from 1.6.1982 to 22.8.1985 the respondent was not on duty even for a single day.

3. After having gone through the record and after having heard the learned counsel for the petitioner, I find that the labour court was not at all justified in treating the entire period from 1.8.1982 to 22.8.1985 as duty. In so far as the leave of the respondent is concerned, the labour court itself has observed that some of his applications for leave were actually rejected by the board and he was communicated accordingly. He was repeatedly called upon to join the duty but he persistently refused to join the duty. In my opinion, therefore, the labour court was under a duty to work out a period, which can be treated as duty in so far as the respondent is concerned, with reference to the leave regulations filed by the board. Though the entire record was produced before the labour court and though some of the communications have been referred to by the labour court, the labour court has not appreciated the impact of those communications. The question that was required to be considered by the labour court, was that an employee who remains absent continuously for the period of 3 years, refuses, to join duties despite being repeatedly called upon to do so by his employer, is he entitled to be treated on duty during that period. This question, in my opinion, has to be viewed from the point of view that his employer is a public sector undertakings and what is to be paid to the respondent is public money for the period during which he has admittedly not worked. In my opinion, therefore, the order impugned in this petition is liable to be set aside and the proceedings are liable to be remanded back to the labour court for de novo consideration and decision in accordance with law and in the light of the observations made above.

4. In the result, therefore, the petition succeeds in part and is allowed. The order impugned in the petition is set aside. The application filed by the respondent u/s 33-C(2) of the Industrial Disputes Act is remanded back to the labour court, Sangli for consideration and decision in the light of the observations made above. Rule made absolute accordingly with no order as to costs.

5. The learned counsel for the petitioner has informed that some amount has been deposited by the petitioner with the labour court, which is lying in the deposit of the labour court. In case such deposit is lying in the labour court, the petitioner shall be permitted to withdraw the same by the labour court if such an application is made.