

(1995) 05 MP CK 0018

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4005 of 1994

Krishi Upaj Mandi Samiti

APPELLANT

Vs

Muzahid Hussain and Another

RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1995) 71 FLR 405 : (1998) 3 LLJ 333

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : Mohan Tamas Kar, for the Appellant; Vivek Rusia, for the Respondent

Judgement

S.K. Dubey, J.—By this petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the award dated January 27, 1994 pronounced on February 21, 1994 passed in case No. 18/ ROA/Reference by the Labour Court, Durg (Annexure P-2), whereby the Respondent No. 1 was directed to be reinstated with full back wages as oral order of discontinuance of service of Respondent No. 1 was held to be illegal as passed in violation of Section 25F of the Industrial Disputes Act, 1947 (for short the "Act").

2. Learned counsel for the petitioner submitted that there is no evidence on record to prove that the respondent was continuously in the employment for a period of 240 days preceding to the date of discontinuance. In any case the workman was not entitled to back wages as he has not led evidence of remaining unemployed during the period of forced unemployment.

3. Shri Vivek Rusia, learned counsel for the respondent submitted that the workman was in continuous employment from December 13, 1988 and was performing his duties satisfactorily as Habdar. The petitioner has not established from the record that the workman was not in continuous employment and was not paid wages for the period as alleged by the workman right from December 13, 1988 to May 31, 1991. It is also submitted that the petitioner having failed to

produce the documentary evidence, the Labour Court on the evidence adduced by the parties rightly held that the workman was continuously in employment from December 13, 1988 to May 31, 1991. As the discontinuance was in violation of Section 25F of the Act, the Labour Court rightly declared it as illegal. As regards gainful employment law is well settled that is the burden of the employer to plead and prove that a workman was gainfully in employment during the period of his forced unemployment, but, the petitioner has not placed any material nor the circumstances for not awarding back/wages. However to put an end to the litigation, respondent is willing to forego his 50% of the back wages, therefore, the award be modified accordingly.

4. After hearing counsel, I am of the opinion that the finding of fact recorded by the Labour Court of the workman continuously working for more than 240 days preceding to retrenchment cannot be interfered in writ jurisdiction which is neither manifestly illegal nor is perverse. As the order of discontinuance of service was without complying the mandatory conditions of Section 25F of the Act,-the Labour Court rightly held the action of the petitioner employer as illegal and void.

5. As regards back wages the normal rule is that whenever an order of termination is illegal, reinstatement follows with back wages, unless the employer pleads and proves that the workman was gainfully employed during the period of his forced unemployment. For that the petitioner did not place any material nor also proved the circumstances for disentitlement of back wages or its part.

6. However, as the Respondent No. 1, to avoid further litigation has offered to forego 50% of back wages from the date of termination till the date of the award, this petition is disposed of with the direction to the petitioner to reinstate the Respondent No. 1 within a period of one month and to pay him all ancillary benefits with 50% back wages from the date of termination till the date of reinstatement. Petitioner will also pay the costs of this petition. Counsel's fee Rs. 250/-.