
(2017) 04 MP CK 0123
In the Madhya Pradesh High Court
Case No : 18732 of 2016

Mintu Dubey

APPELLANT

Vs

Union of India through SP, CBI Jabalpur

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Industrial Disputes Act, 1947, Section 25F, Section 25G, Section 25B, Section 25H, Section 25B(1) -
Conditions precedent to retre

Citation : (2017) 04 MP CK 0123

Hon'ble Judges : Sanjay Yadav

Bench : Division Bench

Advocate : Rajeshwari Nair, N.K. Salunke

Judgement

1. With consent of learned counsel for the parties, the matter is finally heard.
2. Award-dated 12.5.2016 passed by Central Government Industrial Tribunal-cum-Labour Court, Jabalpur (referred to as "CGIT") has been assailed by the petitioner/management; whereby, the CGIT, in seisin with the industrial dispute as to whether the action of management of the petitioner in terminating the services of Shri Shantilal Guldekar (hereinafter referred to as "workman") w.e.f. 28.7.2002 is legal and justified, has held it to be unjustified and illegal, and directed for reinstatement of workman with full backwages. Evidently, the CGIT found fault with the termination as the same was without following the stipulation contained under Section 25F of the Industrial Disputes Act, 1947 (for short "1947 Act").
3. The CGIT as is evident from the findings has taken note of documents (Exhibit W-3 and W-4) which relate to Payment of Bonus to arrive at a finding as to the working days of the workman that he worked for 37 days in 1991-92, 52 days in 1994-95, 120 days in 1996 and 143 days in 1997. The alleged termination was on 28.7.2002. The dispute was referred as per order-dated 9.10.2006. The CGIT

drew adverse inference for the period from 1997 to 2002 that the Management did not explain as to what happened to the documents about payment of wages to the workman during 12 months preceding termination of service and construed that the workman has worked for more than 240 days preceding 12 calendar months from the date of his termination. Paragraph 10 of the Award contained such finding :-

"10. .. Therefore, circumstances justified adverse inference against management that management would have produced payment vouchers about working of Ist party, it would have supported claim of workman that he completed 240 days continuous service preceding 12 months of his termination"

4. Petitioner takes exception to this finding. It is urged that the CGIT has glossed over the fact on record that workman was engaged by the Branch Manager, Khandwa Branch which comes under the Zonal Office, Indore, intermittently as casual worker and never attained minimum employment days provided under Section 25B of 1947 Act. It is urged that the workman sought relief against Zonal Office at Bhopal under whom he was never engaged. It is further contended that it was incumbent upon the workman to have established on the basis of the cogent material that he has continuously worked till his services were dispensed with on 28.7.2002. Instead, it is urged that he could only establish of having intermittently worked for 37 days in 1991-92, 52 days in 1994-95, 120 days in 1996, 143 days in 1997; thereafter the workman could not establish of being engaged as would result in termination of his service on 28.7.2002. It is contended that the CGIT grossly erred in shifting the burden on the petitioner-management to prove that the that the workman did not work for more than 240 days. It is further contended that as the management had categorically denied that the workman was intermittently engaged and was not engaged on regular basis nor even he had been continuously engaged for more than 240 days at a stretch the CGIT is not justified in holding that in reply to application for production of vouchers, the management having denied the same cannot be construed nor presumed that he was engaged and was paid through vouchers which is not produced. It is urged that present is a case where for the period for which the workman worked he produced the vouchers and for the period for which he has not worked, no payments are made or muster roll maintained. It is contended that the CGIT has misconstrued entire evidence on record resulting in passing of Award which otherwise contrary to the evidence on record and deserves to be set aside.

5. Countering the submissions, respondent No.1 supports the Award. It is urged that the same is based on the proper appreciation of entire material on record and does not warrant any interference. Considered rival submissions and perused the record.

6. Evidently, it is respondent-workman who alone gave his evidence and in order to establish number of days of work he relied on Ex.W-4, a letter issued from UCO Bank Regional Office Indore addressed to Labour Enforcement Officer

(Central) regarding payment of bonus of Rs.46 for 37 days from 1.4.1991 to 31.3.1992, Rs.121 for 52 days for the period from 1.4.1994 to 31.3.1995, Rs.382 for 128 days for the period from 1.4.1995 to 31.3.1996 and Rs.473/- for the period from 1.4.1996 to 31.3.1997. This established the fact that the workman was intermittently engaged as daily wager. There is no other document on record, except letter from the Union to establish that the respondent-workman was engaged after 31.3.1997. It appears that to overcome these shortfalls in the matter, the respondent workman took recourse to filing of an application for production of payment vouchers of the period from 25.5.1990 to 27.7.2002, knowing well that the management will not be in possession of such vouchers from 25.5.1990 to 31.3.1991 and from 1.4.1997 till his alleged termination on 27.7.2002. The application was thus a device to extricate adverse inference. Respondent did not even get the evidence of any co-worker recorded who could have supported his contention of having continuously worked till alleged retrenchment.

7. Trite it is that the burden of proof is on the workman and not on employer to prove that workman had worked for 240 days or more in year immediately preceding retrenchment.

8. In *R.M. Yellatti vs Assistant Executive Engineer* AIR 2006 SC 355, it is held : "17. Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 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 workmen 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 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 muster rolls per se without any plea of suppression by the claimant workmen will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down 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."9. In *Range Forest Officer vs S.T. Hadimani* AIR 2002 SC 1147, it is held that : "3. .. In our opinion the Tribunal was not right in

placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

10. In *M/s Essen Deinki v. Rajiv Kumar* AIR 2003 SC 38, it is held that "16. The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum ..".

11. In *Surendranagar District Panchayat vs Dahyabhai Amarsinh* AIR 2006 SC 110, it is held :- "19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Courts below have wrongly drawn an adverse inference for non production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25B(1) of the Act. In the fact & situation and in the light of the law on the subject, we find that the workman-respondent is not entitled for the protection or compliance of Section 25F of the Act before his service was terminated by the employer. As regards non- compliance of Sections 25G and 25H suffice is to say that Witness Vinod Mishra examined by the appellant has stated that no seniority list was maintained by the department of daily wagers. In the absence of regular employment of the workman, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the

seniority list and his so called seniority no relief could be given to him for non-compliance of provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have be proved."

12. In the case at hand, as it was a specific stand of the petitioner-management that the respondent-workman was never appointed against any post and has not continuously served the Bank upto 27.7.2002, burden was on the respondent-workman to have established that he had worked for more than 240 days in a year before his retrenchment/termination. However, having failed to establish, the CGIT fell into patent error in construing that the workman had worked for more than 240 days by drawing adverse inference.

13. In view whereof, the impugned Award cannot be given the stamp of approval as the working having not proved of working continuously for more than 240 days in 12 months preceding his alleged termination, provisions of Section 25F of 1947 Act are not attracted.

14. Consequently, impugned Award dated 12.5.2016 is set aside. Petition is allowed to the extent above. There shall be no costs.