
(2000) 05 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 4604 and 4606-4608 of 1998 and 434, 435, 436 and 438 of 1999

M.P. Electricity Board

APPELLANT

Vs

Hariram and Another

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 31(3), 61, 65

Citation : (2000) 87 FLR 750 : (2004) ILR (MP) 887 : (2002) 4 LLJ 817 : (2000) 4 MPHT 65

Hon'ble Judges : Shahi Kant Kulshreshtha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Kulshreshtha, J.—The Petitioner M.P. Electricity Board has filed Writ Petition No. 4604 of 1998 against the order dated June 6, 1998 (Annexure-P/1) of the Industrial Court, Bhopal in Appeal No. 130/M.P.I.R./1997, by which the appeal of respondent Hari Ram has been allowed and the petitioner has been directed to reinstate him in service with back-wages, Writ Petition No. 4606 of 1998 against the order dated June 6, 1998 of the Industrial Court (Annexure-P/1) in Appeal No. 132/M.P.I.R./1997, Writ Petition No. 4607 of 1998 against the order dated June 6, 1998 (Annexure-P/1) of the Industrial Court in Appeal No. 131 / M.P.I.R./1997 and Writ Petition No. 4608 of 1998 against the order dated June 6, 1998 (Annexure-P/1) of the Industrial Court in Appeal No. 129/M.P.I.R./1997 for reinstatement of, respondents Toran Singh, Deen Dayal, Karan Singh. Respondent Hari Ram, Toran Singh, Deen Dayal and Karan Singh have also filed separate Writ Petitions W. P. Nos. 438 of 1999, 435 of 1999, 434 of 1999 and 436 of 1999, respectively, challenging the said order in so far as the back wages have been restricted to 50% and have claimed full back wages for the period upto reinstatement in service.

2. It is not disputed between the parties that Hari Ram, Toran Singh, Deen Dayal

and Karan Singh had been engaged by the M.P. Electricity Board in connection with its project as unskilled labourers on daily wages from time to time. It is also not disputed that their services had later been discontinued and they had, therefore, filed separate applications under the provisions of Section 31 read with Section 61 of the M.P.I.R. Act, seeking reinstatement with full back wages but the Labour Court had dismissed their claim on the ground that within any block of 12 months during the period they had stated to have worked, it was not proved that they had worked for a minimum number of 240 days to attract the requirement of Section 25F of the Industrial Disputes Act, 1947. Against the dismissal of their applications, these employees had filed appeals under the provisions of Section 65 of the M.P.I.R. Act which have been allowed by separate orders passed by the Industrial Court which both, the employer and the employees, have changed in these petitions.

3. Learned counsel for the petitioners has raised a singular contention in impugning the correctness and the legality of the Award Annexure-P/1. According to the learned counsel, if the chart Annexure-P/9 indicating the period during which these employees had been engaged is examined, it is clear that none of them had completed the requisite period of 240 days within any block of 12 months with the result the Industrial Court ought not to have set aside the order of the Labour Court dismissing the claim of the employees. Learned counsel for the petitioners has contended that in differing from the Labour Court, the Industrial Court has mainly rested its finding on the adverse inference drawn against the employer for not having produced the Muster Rolls for part of the period during which the employees had claimed to have been employed and even if the Industrial Court harboured an impression that production of Muster Roll was essential, for just decision of the case, it should have remanded the matter to the Labour Court and permitted the employer to adduce further evidence by production of the Muster Rolls to substantiate the defence that none of the employees was entitled to the benefit of Section 25F of the I.D. Act. Learned counsel for the employees has pointed out that once the employees deposed that they had continuously worked during the period and it was disputed by the employer on the ground that they had not been continuously engaged and in fact Muster Rolls for certain period had been produced, it was necessary for the employers to have produced the Muster Rolls for the entire period and on failure, adverse inference has rightly been drawn against the employer.

4. The Industrial Court has observed that as per the evidence adduced by the employer, the chart indicating the period during which the individual employees had been engaged on daily wages was prepared on the basis of the Muster Rolls maintained by the employer and it was admitted that the Muster Rolls were available in the Office but still the Muster Rolls pertaining to the entire period during which the employees had claimed to have worked were not produced. The Industrial Court has observed that the documents having material bearing on the controversy in issue were thus withheld by the employer and the only inference that could be drawn in a situation like this was that if the said documents have

been produced, they would not have supported the case of the employer.

5. In the present case, it is also to be borne in mind that the employer Electricity Board itself exhibited a chart indicating the period during which the employees had been engaged on daily wages and also produced some of the Muster Rolls in support of their defence that although the employees had claimed to have worked for a few years, none of them had worked for 240 days in any year. It is also not disputed that Muster Rolls had been produced before the Labour Court only for the part of the period during which the employees had claimed to have regularly worked on daily wages which indicated that part of the evidence in possession of the Board had been withheld without any justifiable cause or explanation. The irresistible conclusion from such withholding of the material evidence in possession of the party could only be that if the document had been produced, it would not have supported the party in possession. One cannot also be oblivious of the fact that in matters pertaining to such engagement on daily wages, the record is normally maintained by the employer and in view of the categorical assertion of the employees that they had worked continuously during the period in question and the defence that they had been only intermittently engaged, for non-production of the Muster Rolls for the part of the period a presumption could be drawn against the employer. Since the Industrial Court has assigned cogent reasons for drawing adverse inference against the employer in the facts and circumstances of the cases of these employees and it has not been shown that the finding suffers from any perversity, no interference is called for. Learned counsel for the petitioners has, however, submitted that the Industrial Court ought to have remanded the matter to the Labour Court to permit opportunity to the employers to now produce the Muster Rolls and to establish that none of the employees before the Court had completed the prescribed minimum period of 240 days in any block of a year. It has not even been suggested that at any point of time any request was made by the employer for adducing additional evidence by producing the Muster Rolls in proof of the chart submitted before the Labour Court. The Petitioner Board had full opportunity of placing the entire material in its possession to demolish the case put forth by the employees. There was, thus, no occasion for the Industrial Court to consider that the cases should be remanded to the Labour Court for additional evidence. The petitioner Board has thus, failed to make out any ground calling for interference in the order passed by the Industrial Court.

6. The respondents have also filed petitions claiming full back wages from the date of termination to the date of reinstatement in place of half back wages awarded by the Industrial Court. Learned counsel for the respondents has pointed out that it was clear even from the chart Annexure-P/9 filed by the petitioner Board that Han Ram had been engaged from time to time from November 16, 1987 to March 15, 1991, Toran Singh from November 16, 1987 to May 15, 1991 and other employees had also worked for a period exceeding six months continuously on daily wages and since they had also claimed classification as permanent employees under Clause 2 of the Standard Standing

Orders for all the undertakings in the State, the Industrial Court committed an apparent error in having treated them as daily rated employees and in restricting back wages to 50% on the ground that such employees get paid the wages only on the days they attend the work. It is seen from the application filed by these employees u/s 31(3) of the M.P.I.R. Act that no relief of classification was sought nor any claim was made in the appeals filed by them before the Industrial Court. From the chart Annexure-P/9 submitted by the employer also, it is clear that the employees had not been engaged on all working days and the period during, which they had worked was also punctuated by short periods when they had not been engaged at all. In these circumstances, the order awarding half back wages also does not call for any interference.

7. In the result all these petitions are dismissed. The parties are left to bear their own costs.