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**(2000) 08 RAJ CK 0017**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 2235 of 1997**

Munshi Khan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 09-08-2000

**Acts Referred:**

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

**Citation :** (2000) 4 RLW 297 : (2001) 4 WLC 250 : (2001) 1 WLN 692

**Hon'ble Judges :** Rajesh Balia, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. The petition is directed against the Award dated 4.4.1996 passed by the Labour Court, Bhilwara.

3. The petitioner claims himself to be the workman employed as Painter on daily rated basis since 1st July, 1986 until July, 1992 in the Public Works Department of the State of Rajasthan. His claim, thereafter, is that his services have been dispensed with without living him any notice or wages in lieu of one month's notice as required u/s 25F(a) of the Industrial Disputes Act, 1947 and also that no payment of compensation u/s 25-F(b) of the Act has been made. The petitioner has not only claimed that he is in continuous service since 1986 and is entitled to protection u/s 25F being in continuous service for more than a year in terms of Section 25-B(I) but he has also contended in alternate that even during the 12 calendar months immediately preceding the alleged termination of service he has actually worked for 240 days so as to be covered by Section 25-B(2). He has given details in his claim petition about actual working between Jan. 1991 to Dec. 1992. He also summoned the entire record of his functioning with the respondents consisting of muster rolls from 1st July, 1986 to 31st July, 1992 and record of the payments made to the Painter on submission of cash receipts

during September, 1991 to June, 1992.

4. The Court observed that the requested documents had been produced as desired by the workman and also recorded that the workman has admitted in his cross-examination that that attendance shown in the muster rolls discloses correct position about his actual working. It recorded a finding that between Feb. 91 to Jan 92 he has actually worked only for 162 days.

5. However, the Award is conspicuously silent about showing consideration of any material concerning the period prior to Feb. 91 or period after Jan. 92 upto the alleged date of termination that is 1.8.1992. It is also not the finding that the petitioner workman has not worked since Feb. 1992 at all. There is no dispute that the petitioner workman had made request for production of muster rolls since Jan. 1986 until the date of termination of his services as well as record of payment through receipts between Sept. 91 to July 92. The petitioner alleges that entire record has not been produced whereas the Court records that desired record has been produced. If the finding is accepted to be correct, then there is no consideration of record prior to Feb. 91 or after Jan. 92, whereas the petitioner claims to be in service continuously since Jan. 86 to July 92. If the Tribunal has considered the entire material that has been produced by the parties, then it is obvious that finding of the labour Court that all desired record has been produced becomes patently erroneous. In either case the award suffers from an error apparent from record.

6. It further appears that the Presiding Officer of the Labour Court was labouring under a serious misconception about the expression "in continuous service for not less than year used in Section 25F of the Industrial Disputes Act, 1947. What is meant by continuous service for a requisite period for the purposes of Chapter V-A has been defined in Section 25-B of the Act which reads as under:

25-B. Definition of continuous service.--For the purpose of this chapter.-

(1) 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 authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessaion of, work which is not due to any fault on the part of the workman;

(2) Where as workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.

(a) for a period of one year, if the workman, during a period of twelve calender months proceeding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days in any other case.

Explanation.--For the purposes of Clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which.

(i) he has been laid off under an agreement as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

7. Perusal of the aforesaid provision makes it abundantly clear that it envisages viewing the question of "continuous service for one year or more" in two different alternative and independent perspective. Firstly a person may be in continuous service actually for a period of one year or more. In that event, the question is not of so much of counting the actual working days in calendar month but the question is of continuous service for a period with uninterrupted service including service which may be interrupted on account of sickness or authorised leave an accident or a strike which is not illegal, or a lock-out or a cessaion of work which is not due to any fault on the part of the workman. If a person is in actual employment for a period of more than one year the question will have to be determined u/s 25-B(1). It is only where a case is not covered u/s 25-B(1), One has to direct his enquiry into existence of conditions under Sub-section (2) of Section 25-B, which envisages that even where a workman is not in continuous service within the meaning of Section 25-B(1) for a period of one year or six months, as the case may be, still he shall be deemed to be in continuous service for a period of one year if the workman during the period of 12 calendar months immediately preceding the date with reference to which calculation is to be made, has worked under the employer for not less than 190 days in case of a workman employed below ground in a mine, and 240 days in any other case, or for a period of six months if the workman during the period of six calendar months preceding the date has actually worked under the employer for not less than 95 days in case of a workman employed below ground in a mine

and 120 days in any other case. The actual working may be in fact in a period of less than 12 calendar months and may not be continuously for the requisite days. That is to say the concerned workman must have been in actual service, whether continuously or with breaks for 240 days in a span of period not exceeding 12 calendar months immediately preceding the relevant date of termination. As in the present case the claim is that the petitioner's services were terminated w.e.f. 1st Aug. 92, the relevant enquiry u/s 25-B(2) shall be actual working days between Aug. 1991 till July 1992, which constitutes the span of 12 calendar months immediately preceding the relevant date. During this period he may or may not be employed in each of the calendar month nor it is required that actual working of 240 days be uninterrupted or continuously, 240 days actually working may be accounted by totalling the intermittent working during the said span. It is also no more in doubt that in calculating the actual working days, the paid holidays and weekly holidays are also to be included. The concept of "uninterrupted service" is not relevant u/s 25-B(2) in contrast to Section 25-B(1).

8. Thus, in order to determine the controversy u/s 25-B(2) the first requisite is determination of the date with reference to which the actual working in the 12 preceding calendar months has to be computed. The learned Judge has singularly failed in determining this date at all with reference to which the computation has been made in case the employment of the workman is not covered u/s 25-B(1). He has also failed to consider whether in view of the claim laid by the workman his case is to be dealt with u/s 25-B(1)) or on finding that his case does not fall under Sub-section (1) he was required to undertake enquiry into conditions of Section 25-B(1). The Labour Court Judge has neither applied his mind to claim of continuity in service since 1986 u/s 25-B(1) nor about working since Aug. 1991 to until July 1992 u/s 25-B(2). He has only considered the working between Feb. 1991 to Jan. 1992, for which there was no basic finding in the order.

9. The Labour Court has also failed to consider that as per claim the date with reference to which actual working within 12 calendar months is to be computed has to be calculated backward from July, 1992 and not from Feb. 1992. He has directed the enquiry as if the computation of the working was to be with reference each Georgian calendar year and not with reference to the calendar months preceding the date of termination.

10. Thus, in my opinion, the Award has been made in a most perfunctory manner without application of mind to the real question arising in the case by misdirecting his enquiry on account of not perceiving the true import of expression "In service for a continuous period of one year."

11. In the result the petition succeeds. The impugned Award dated 4.4.1997 is set aside and the Labour Court, Bhilwara is directed to adjudicate the dispute referred to it afresh in accordance with law. Since the matter is pending for considerable long period, it is further directed that as far as possible, the

proceedings may now be completed within a period of 6 months from the date of receipt of this order.

12. There shall be no order as to costs.