

(2016) 11 MP CK 0039
In the Madhya Pradesh High Court
Case No : W.P. No. 8669 of 2009

Narmada Extructions Ltd.

APPELLANT

Vs

Babulal

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3), Section 61, Section 62

Citation : (2017) 1 LLJ 313

Hon'ble Judges : Mr. Prakash Shrivastava, J.

Bench : Single Bench

Advocate : None, for the Respondent; Shri Umesh Gajankush, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Prakash Shrivastva, J. - Heard.

By this writ petition, petitioner has challenged the award of the Labour Court dated 28/05/09, by which, the Labour Court had allowed the application under Section 31(3) r/w Section 61 & 62 of the M.P. Industrial Relations Act filed by the Workman/Babulal and directed re-instatement with back wages.

2. In brief, the original respondent/Babulal had filed an application before the Labour Court with the plea that he was appointed in the petitioner's establishment in the year 1995 as Workman and had worked till 02/07/03. On 02/07/03, the personal Manager of the establishment had asked the respondent to submit the resignation on the ground that sufficient work of the electrician was not available, therefore, he should resign and on 03/07/03 the respondent was asked to sign the blank paper, but the respondent had refused, therefore, the petitioner had stopped taking work from the respondent without issuing any order. Further averment was that services of the respondent were terminated on 03/07/03 without giving one month prior notice or without any compensation.

3. A reply was filed by the petitioner taking the stand that respondent was appointed on 01/10/99 on the post of Electrical Supervisor and no resignation of the respondent was sought. On the contrary, the respondent had abandoned the work on 02/07/03. It was further stated that work of the respondent was not satisfactory.

4. The Labour Court has examined the respective plea raised by the parties and has noted the undisputed position that respondent was employed with the petitioner and he had worked with the petitioner establishment up to 02/07/03. After examining the oral as well as documentary evidence, Labour Court has found that petitioner had orally terminated the services of the respondent on 03/07/03. The Labour Court has also found that the services of the respondent were terminated without any sufficient and justifiable reason, without giving any opportunity of hearing or following due process of law or without paying any retrenchment compensation. It has been found that the provision of Section 25 of the Industrial Dispute Act has not been followed. The Labour Court has also noted that respondent had completed 240 days in the preceding year. It has also been found by the Labour Court that the respondent was working as Electrician and was covered within the meaning of Workman and that he had remained unemployed after the termination and that the respondent/workman had reached the age of superannuation on 31/05/06, hence, the Labour Court had directed re-instatement with back wages for the period from 03/07/03 to 31/05/06.

5. Learned counsel appearing for the petitioner submits that respondent was appointed Electrical Supervisor and is not covered within the meaning of Workman. He further submits that award of back wages is not automatic on setting aside the order of termination.

6. At the outset, it would be relevant to mention that in the meanwhile, the respondent has died and his widow has been brought on record as legal representative.

7. Having heard learned counsel for the petitioner and on perusal of the record, it is noticed that the plea raised by the petitioner that respondent was working in supervisory capacity has been examined by the Labour Court in light of the oral as well as documentary evidence. The Labour Court had framed the specific issues on this plea and answered it by holding that respondent was not working as Electrical Supervisor, but he was working as Electrician. The Labour Court has noted the statement of the respondent that he used to do the work of Electrician such as repairing the electrical equipment and changing the equipment and he was not supervising any other person. There was no cross-examination of the respondent in this regard. Though, the petitioner had raised the plea that respondent was working as Electrical Supervisor and was supervising the work by two persons, but they had not produced any material to substantiate the said plea, hence, the Labour Court has rightly found that the plea raised by the petitioner had remained unproved. The findings which have been recorded by the Labour Court in this regard is duly supported by the evidence, hence, the Labour

Court has not committed any error in holding that respondent was Workman and he was covered within the meaning of Section 2(13) of the M.P. Industrial Relations Act and that he was not working as Supervisor.

8. So far as the issue of back wages is concerned, a perusal of the award of the Labour Court as well as the record reveals that respondent/Workman had stated on oath before the Labour Court that after termination, he was not employed anywhere else. He had also stated that he had tried to find out the employment at other place, but he was not successful. The petitioner had failed to adduce any evidence that respondent was meanwhile employed at some other place. It is also noted that at the time of termination, respondent was aged 55 years.

9. In these circumstances, the Labour Court has not committed any error in proceeding on the basis that respondent was not employed in the meanwhile. Since, at the time of termination, the age of the respondent was 55 years and he had reached the age of superannuation i.e. 58 years on 31/05/06, therefore, the Labour Court has rightly awarded the back wages for the period from 03/07/03 to 31/05/06. The award has been passed by the Labour Court on the basis of the evidence led by the parties and the findings which have been recorded by the Labour Court are neither erroneous nor perverse.

10. In these circumstances, I am of the opinion that no case for interference in the impugned award is made out.

11. Writ petition is, accordingly, dismissed.