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**(2000) 02 BOM CK 0058**  
**In the Bombay High Court**  
**Case No : O.O.C.J. W.P. No. 2178 of 1999**

P.M. More

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal No.  
1 and Another

RESPONDENT

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**Date of Decision :** 04-02-2000

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F

**Citation :** (2000) 87 FLR 228 : (2001) 3 LLJ 689

**Hon'ble Judges :** R.M. Lodha, J

**Bench :** Single Bench

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## Judgement

R.M. Lodha, J.—Through this writ petition filed under Article 226 of the Constitution of India, the employee who has been refused reinstatement with consequential reliefs by Central Government Industrial Tribunal No. 1 Mumbai in Reference No. CGIT-1/30 of 1993 seeks to challenge the legality and correctness of the award passed by the Tribunal on August 16, 1996.

2. The petitioner (hereinafter referred to as the workman) has set out the following relevant facts in the writ petition.

The workman was employed by Shipping Corporation of India - respondent No. 2 herein (for short "the employer") in the capacity of dock clerk to transact the business of the employer in the Port of Mumbai with effect from August 23, 1986 along with 10 other workmen. The employer terminated the services of these 11 workmen including the present workman with effect from November 23, 1988. All the 11 workmen who were terminated by the employer demanded reinstatement through their union. The matter formally went in conciliation and the conciliation, settlements were signed. Nine workmen out of 11 who were so terminated were accorded employment by the employer accordingly but the present workman and one more workman, namely G.V. Nilvarna were neither reinstated nor employed by the employer. Ultimately, the Central Government vide its order dated July 20, 1993 referred the industrial dispute for adjudication

to the Central Government Industrial Tribunal No. 1, Mumbai "whether the management of Shipping Corporation of India operating Port of Bombay is justified in terminating the services of S/Shri P.M. More and G.V. Nilvarna, Dock Clerks, with effect from November 23, 1988 without complying with the provisions of Industrial Disputes act 1947? If not, to what relief are these workmen entitled to? After the aforesaid industrial dispute was referred, the union filed the statement of claim on November 7, 1993 on behalf of the present workman and the other workman Shri V.G. Nilvarna. The employer filed reply to the statement of claim and contested the case set up by the Union on behalf of the workman herein and the other workman G.V. Nilvarna. In support of their case, the union filed various documents including copies of two settlements signed in conciliation. The other workman G.V. Nilvarna led evidence by way of his affidavit in lieu of examination-in-chief and was cross- examined by the employer. The present workman did not produce himself in witness box since there was already sufficient material. The Industrial Tribunal allowed the reference in respect of the other workman G.V. Nilvarna but present workman's claim was rejected on the ground that about him it is not proved that he had worked for 240 days continuously with the employer preceding the date of his termination. This has led the present workman to file the writ petition.

3. The only question which falls for determination in the case is whether the workman has completed 240 days preceding the date of his termination. Since there is admittedly no compliance of Section 25-F, if the workman is held to have completed 240 days of continuous service preceding the date of his termination, obviously his termination would be rendered bad in law and he shall be entitled to reinstatement. The Tribunal while rejecting the present petitioner's case observed thus:

"15. In the written statement of claim it was pleaded that the services of the two workmen had been terminated without complying with the provisions of the Industrial Disputes Act. Since in case of workman More, it has not been established satisfactorily that he had continuously worked for more than 240 days within a year preceding the date of retrenchment, he cannot seek and cannot claim any benefit u/s 25-F of the Industrial Disputes Act and there is no material before me to hold that termination of his service was bad".

4. It is true that the present workman P.M. More did not appear in the witness box while the other workman G.V. Nilvarna examined himself but I find from the admitted document, namely, the settlement arrived at on May 7, 1990 u/s 12(3) of the Industrial Disputes Act between the employer and the union that the present workman joined service in the year 1987 and his services were terminated on November 23, 1988 which clearly proves that the workman had continuously worked for more than 240 days in the year preceding the date of termination. In the settlement dated May 7, 1990, the following table about six employees including the present workman is given:

Name Qualification working w.e.f. Date of termination

1. 2. 3. 4.

Mr. Naseer Siraj Sayed B.A. 1983 23/11/1988

Mr. Jagdish Chandra Barola X Std. 1984 23/11/1988

Mr. Sudhakar M.Bhandare VIII Std. 1984 23/11/1988

Mr. Nirant Narayan Surve S.Y.B.Com. 1985 23/11/1988

Mr. Pandharinath More S.S.C. 1987 23/11/1988

Mr. Gajendra Nilvarna XII Std. 1987 23/11/1988

5. The present workman's name finds place at Sr. No. 5 which shows that he has been working with effect from 1987 and he was terminated on November 23, 1988. Though the case of the present workman is that he was employed by the respondent workman on November 23, 1986 in the absence of any evidence to that effect the same cannot be believed but on the basis of admitted document it is amply proved that the present workman has been employed with effect from 1987. Even if for the sake of argument the last date of the year 1987 is taken for consideration as the date on which the workman was employed, the fact that he was terminated on November 23, 1988 would show that he has worked for 240 days preceding the year. There is no evidence to the contrary led by the employer to show that the present workman had not worked continuously from 1987 to November 23, 1988. The period of petitioner's employment is reflected from the settlement dated May 7, 1990. The industrial disputes referred to Industrial Tribunal for adjudication are not required to be decided as civil suits and strictly speaking formalities of law of evidence are also not applicable. If before the Tribunal there is uncontroverted material from which a particular fact can be inferred, it is not necessary that the oral evidence should be led by the parties. In the present case even if the present workman did not enter the witness box, the undisputed and uncontroverted memorandum of settlement arrived at on May 7, 1990 between the employer and the union clearly shows and proves that the present workman had worked for more than 240 days preceding the date of his termination since it has been mentioned therein that he has been working since the year 1987 till he was terminated on November 23, 1988. Thus, it is clearly established on record that the present workman had completed 240 days of service in the year preceding the date of his termination. Admittedly the provisions contained in Section 25-F of the Industrial Disputes Act were not complied with and, therefore, the termination is apparently bad in law as has been held by the Tribunal in case of said workman G.V. Nilvarna.

6. Having held the workman's termination bad in law, the question that arises is for consequential relief. The learned counsel for the petitioner was fair enough to state that the petitioner would not claim back wages if he is reinstated within a period of one month from today with continuity of service.

7. Accordingly, the writ petition is allowed. The award passed by Central

Government Industrial Tribunal No. 1 on August 16, 1996 in respect of the present petitioner is quashed and set aside. It is held that the petitioner shall be entitled to reinstatement with continuity of service but without back wages. The respondent employer is directed to reinstate the petitioner within one month from today.

8. Rule is disposed of in aforesaid terms.

9. Certified copy expedited.