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(2019) 08 SHI CK 0062

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1559 Of 2018

Prakash Chand APPELLANT

Vs

State Of Himachal Pradesh And Another RESPONDENT

Date of Decision : 23-08-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25(f), 25(g), 25(h), 25(n), 25B(1)
Constitution Of India, 1950 — Article 309

Citation : (2019) 08 SHI CK 0062

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : H.K. Paul, Tara Chand Chauhan, Anil Jaswal

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Whether petitioner was engaged only on bill basis, for a period from May 2008 to August 2008, as a stop-gap arrangement, during leave period of regular driver of respondents-department and had not completed 180 days (Tribal area) of service & therefore was not entitled for reliefs prayed by him, is the question involved in the instant writ petition. Reference having been answered against the petitioner, instant writ petition has been preferred by him.

2. The factual position of the case:-

2(i) The case of the petitioner is that; he was engaged as driver on daily wage basis by the respondents from 1.02.2008 till 31.12.2009; he had completed continuous working for 240 days, when his services were orally terminated; oral termination of his service was without compliance to provisions of Sections 25(G), 25(H) and 25(N) of Industrial Disputes Act.

2(ii) In respect of above dispute, following reference was sent by the competent authority to the learned Presiding Judge, H.P. Industrial Tribunal-cum-Labour

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Court, Shimla, for adjudication: -

"Whether the termination of services as Driver of Shri Parkash Chand S/o Shri Punnu Ram, R/o Village Randoul, P.O. Tatapani, Tehsil Karsog, District Mandi, H.P., by the Divisional Forest Officer Division, Kinnaur at Reckong-Peo, District Kinnaur, H.P. w.e.f. December, 2009 without complying with the provisions of the Industrial Disputes Act, 1947,is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above ex-driver is entitled to from the above employer?"

2(iii) Petitioner filed the claim petition on the basis of above factual position seeking relief of re-instatement w.e.f. 31.12.2009 with full back-wages, seniority and other consequential service benefits.

2(iv) Stand of the respondents-State to the claim was:

a) Petitioner was not engaged on daily-wage basis.

b) Regular driver, namely, Sh. Jai Singh, working in the office of DFO Reckong Peo, District Kinnaur, had proceeded on long leave. During his absence, the petitioner was engaged as driver on bill basis. No appointment letter was issued to the petitioner, in fact such engagement was purely a stop-gap arrangement.

c) Since, the engagement of the petitioner was during the leave period of the regular driver, Sh. Jai Singh, as stop-gap arrangement and on bill basis, therefore, neither the services of the petitioner were terminated nor he was retrenched.

d) Petitioner had worked only on bill basis and that too w.e.f. 2.5.2008 to 31.08.2008 and not from 1.02.2008 till 31.12.2009, as projected by the petitioner.

e) It was further submitted in the reply that in Mark PX, inadvertently the period of engagement of the petitioner was shown as 1.02.2008 till 31.12.2009. But this was without verifying the record. After verifying man-days chart of the petitioner, it was found that he had worked on bill basis only from 2.05.2008 to 31.08.2008 and as such he had not completed 180/240 days in calender year, therefore, provisions of Section 25(N) of Industrial Disputes Act, were not attracted.

3. The parties led oral as well as documentary evidence. After considering the entire record as well as the pleadings of the parties, the learned Tribunal below vide impugned award dated 12.4.2018, dismissed the petitioner's claim by answering the reference in favour of respondents-State. Feeling aggrieved, the instant writ petition has been preferred by the petitioner.

4. I have heard Mr. H.K. Paul, learned counsel for the petitioner and Mr. Anil Jaswal, Additional Advocate General, for the respondents-State and carefully gone through the record.

5. Nature of payment made to the petitioner & period thereof:

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5(i) Admittedly no appointment letter/order had been issued to the petitioner. Sh. Jai Singh, regular driver working in the department of respondents had proceeded on long leave. It was because of this administrative exigency, the services of petitioner were engaged by the respondents-department.

5(ii) Payment made to the petitioner has been proved by way of Ext. PW5/A-1 to Ext. PW5/A-8. These are the bills for the months of May, June, July and August 2008, evidencing payment of different amounts mentioned therein, duly received by the petitioner in lieu of his services. These documents (Bills) have been produced and proved by PW-5, Sh. Mukar Singh (Junior Assistant). Apart from these bills, there is no other document on record to reflect payment made to the petitioner for any other period. Though, these bills reflect the payment made to the petitioner as daily-wage driver of vehicle No. HP-25A-0304, however, perusal of the entire bills together with the stand taken and proved by the respondents, makes it clear that the petitioner was not engaged on daily-wage basis, but, on monthly bill basis.

5(iii) Though petitioner has claimed backwages w.e.f. 31.12.2009, however, there is no whisper either in the claim petition or in the documents or in oral evidence produced by the petitioner that but for the period from May 2008 to August 2008, he had received payment for any other period from the respondents. Therefore, it can safely be concluded that petitioner was engaged only on bill basis and that he has been paid wages only for the months of May 2008 to August 2008.

6. Nature of appointment of petitioner:

6(i) Stand taken by the respondents is that the petitioner was engaged in absence of their regular driver Sh. Jai Singh, who had proceeded on long leave.

6(ii) As per the respondents, the engagement of petitioner on bill-basis was purely a stop - gap arrangement during the leave period of Sh Jai Singh (regular driver), in order to meet out the administrative exigency. In fact, this position has also been admitted by the petitioner himself while deposing as PW-6. He has admitted that Sh. Jai Singh, regular driver of vehicle No. HP-25A-0304, had proceeded on long leave; because of which he was engaged to drive the afore-said vehicle.

6(iii) In view of the defence of the respondents, which is not denied by the petitioner, it is apparent that the petitioner was engaged merely as stop-gap arrangement by the respondents.

7. Period of engagement:

7(i) This is a highly contentious issue between the parties. According to the respondents, the petitioner had worked with them from May 2008 to August 2008. Whereas, petitioner's assertion is that he was engaged from 1.02.2008 till 31.12.2009 and he had accordingly completed more than 180 days (as required in the tribal areas), before his services were orally terminated by the

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respondents in violation of the mandatory provisions of Sections 25(G), 25(H) and 25(N) of Industrial Disputes Act.

7(ii) To prove that he had worked from 1.02.2008 till 31.12.2009 for the respondents department, the petitioner produced six witnesses including himself.

7(iii) Statements of witnesses:

7(iii)a) PW-1, Sh. Kam Raj , produced the original log book record, in respect of vehicle No. HP-06-0128, attached with DFO-CAT-Plan, Nichar at Rampur, H.P. As per his statement, one Sh. Prem Chand, used to drive the afore-said vehicle from 1.5.2008 to 29.01.2010.

In his cross-examination, he has pleaded ignorance, as to whether driver, Sh. Prem Chand, had also driven vehicle No. HP-25A-0304, intermittently. He has also pleaded ignorance, as to whether, driver Sh. Jai Singh, was working in the office on regular basis and used to drive vehicle No. HP-25A-0304, or on account of proceeding on leave of Jai Singh (regular driver), petitioner, Prakash Chand, was engaged on bill basis. Evidence of this witness is not relevant to the case.

7(iii)b) PW2, Sh. Satya Pal, has produced and proved receipts from Tribal Bhawan, Dhalli, Shimla, as Ext.PW2/A-2 to Ext.PW2/A-18.

Ext.PW2/A-2 to Ext.PW2/A-16, pertain to period from 08.05.2008 to 18.08.2008. It is only the receipts at Ext.PW2/A-17, which pertain to two different dates i.e. 6.11.2008 and 11.2.2009, in the name of petitioner with vehicle No. HP-25A-0304. One of the receipt at Ext.PW2/A-16, is of 9.9.2008. Thus, there are three receipts i.e. of 9.9.2008, 6.11.2008 and of 11.01.2009 (Subsequent to 31.8.2008), but, this will not prove that petitioner had been working continuously with the respondents-department, subsequent to 31.08.2008 till 31.12.2009, as is the case set up by him.

7(iii)c) PW-3, Sh. Prem Chand- statement of this witness is to be read in conjunction with statement of PW-1, Sh. Kam Raj. As observed earlier. Sh. Kam Raj, as PW-1, had deposed that Sh. Prem Chand, was intermittently driving the vehicle No. HP-06-0128. Sh. Prem Chand, while appearing as PW-3, has deposed that he was driving the vehicle No. HP-06-0128, from May 2008 to December 2009, and vehicle No. HP-25A-0304 was being driven by Sh. Prakash Chand.

He has pleaded his ignorance about the mode of payment to the petitioner; and whether, the petitioner was engaged on daily-wage basis or bill basis. He has also admitted that regular driver of vehicle No. HP-25A-0304, was on leave and because of this reason, petitioner was engaged as driver of said vehicle as stop-gap arrangement.

This witness does not advance the case of the petitioner that petitioner worked continuously from 1.02.2008 till 31.12.2009. His evidence is to the extent that petitioner used to drive the vehicle No. HP-25A-0304 and that he was engaged on account of proceeding of leave of regular driver Sh. Jai Singh, as stop-gap

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arrangement.

7(iii)d) PW-4, Sh. Rajender Sharma, has produced log book details of vehicle No.HP-25A-0304, as Ext.PW/A-1 to Ext.PW/A-64.

The log book entries produced by PW-4, do not reflect name of the driver. Thus, on the basis of these log book entries, it cannot be inferred that petitioner worked continuously from 1.02.2008 till 31.12.2009.

7(iii)e) PW-5, Sh. Mukar Singh, stated that the petitioner was working as driver in DFO, office Reckong Peo, w.e.f. 1.02.2008 till 31.12.2009, on vehicle No. HP-25A-0304.

He produced maintenance/monthly advance bills in form of Ext.PW-5/B-1 to Ext.PW-5/B-44. He has also produced petrol bills of the afore-vehicle as Ext.PW-5/C-1 to PW-5/C-102.

PW-5, appears to have made an over-board statement as perusal of machinery advance bills reflect that there are no signatures of petitioner on Ext.PW-5/B-1 to Ext.PW5/B-44. Thus, these exhibits do not advance the case of the petitioner that he had continuously served in the respondents-department from 1.02.2008 till 31.12.2009. Though, PW-5 stated that these bills were submitted by the petitioner, Sh. Prakash Chand, but then in the next breath, clarified that he is not aware, who submitted these bills. The petrol advance bills bear signatures of the petitioner from Ext.PW5/C - 1 to Ext.PW5/C-34, covering the period from 07.05.2008 till 31.08.2008. Ext.PW5/C-35 to Ext.PW5/C-54, covering intermittent period from 2.9.2008 to 10.11.2008, bear signatures of the petitioner. The remaining bills from Ext.PW5/C-55 to Ext.PW5/C-102, covering the period from 15.11.2008 to 1.10.2009, do not bear the signatures of the petitioner. In fact, there are some bills on record bearing the signatures of Sh. Jai Singh, (regular driver).

These documents also do not advance the case of the petitioner having continuously worked 1.02.2008 till 31.12.2009, or having completed 180 days of continuous working in tribal area.

7(iii)f) Petitioner has himself stepped into the witness box as PW-6 and reiterated his case in the claim petition.

7(iii)g) Respondents, have examined one Sh. Naresh Kumar as RW-1, who has produced man- days chart of the petitioner as Ext.RW1/C, reflecting that the petitioner worked for 120 days w.e.f 2.05.2008 to 31.08.2008. He has also produced and proved revised written statement and justification of work done (Ext.RW1/C amd RW1/D) by various drivers including the petitioner, during the leave period of Sh. Jai Singh, as Ext.RW/1D. This witness has also proved earned and medical leave of regular driver Sh. Jai Singh, as Ext.RW1/E.Mark-PX, heavily relied upon the petitioner to contend that respondents have themselves admitted his having continuously worked with them from 1st February 2008 till 31st December 2009, has not been admitted by the respondents and stands corrected

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vide Ext.RW1-C & Ext.RW1/D. It is the stand of the respondents-department that Mark-PX was inadvertently issued contrary to the actual position and contrary to the record. Therefore, error was corrected and the man-days chart of the petitioner is now correctly reflected as Ext.RW1-C & Ext.RW1/D. This clarification has been reiterated by the respondents-department in supplementary affidavit, dated 24.06.2019, filed to the instant writ petition.

Thus, no benefit can be taken by the petitioner from Mark-PX. Ext.RW1/C, reflects that petitioner has worked for total 120 days from 2.05.2008 to 31.08.2008. Ext.RW1/D, reflects the work done by other drivers including the petitioner during the leave period of Sh. Jai Singh (regular driver). In fact Ext.RW1/D gives a very clear picture of period of engagement of all the drivers (so called juniors of the petitioner), who were engaged by the respondents-department, during the leave period of Sh. Jai Singh, (regular driver working for the respondents-department).These documents reflect different period of working of drivers namely Sh. Prem Chand, Sh. Prakash Chand (petitioner), Sh. Bahadur Sukh, Sh. Rinku and Sh. Suresh.

The above clearly portrays that petitioner did not work continuously w.e.f. 1st February 2008 to 31st December 2009, and that he worked only on bill basis, as stop-gap arrangement, during the leave period of Sh. Jai Singh (regular driver). Petitioner has tried to lean on the statement made in cross-examination by RW1, Sh. Naresh Kumar, to the effect that as per office order Mark-PX, issued by DFO, Reckong Peo, Sh. Prakash Chand, (petitioner) was driver with the respondents-department w.e.f. 1.02.2008 till 31.12.2009. It has been observed earlier that Mark-PX did not reflect the correct position of man-days chart of the petitioner and this mistake has been corrected by the respondents-department by issuing revised statement Ext.RW1/D, as well as Ext.RW1/C, therefore, no advantage can be derived by the petitioner from the Mark-PX.

8(i) Learned counsel for the petitioner relied upon judgments passed by Hon'ble Apex Court, in cases 2019 (2) SCC 186, titled Vimla Devi and others Vs. National Insurance Company Limited, (2016) 6 SCC 541, titled Raj Kumar Vs. Director of Education and others, 2006 (1) SCC 106, titled R.M. Yellatti vs. Asstt. Executive Engineer, (2011) 6 SCC 584, titled Devinder Singh Vs. Municipal Council, Sanaur, (1984) 1 SCC 509, titled Gammon India Limited vs. Niranjan Dass.

However, these authorities are not applicable to the factual position of the instant case.

8(ii)a) In respect of appointment on stop-gap arrangement during the leave period of regular employee, it is apt to refer to judgment passed by a Coordinate Bench of this Court in CWP No.2872 of 2012, titled Sita Ram Vs. State of H.P. and another, which was upheld in LPA No.25 of 2015:-

5. Submission of learned Advocate appearing on behalf of the petitioner that service of the petitioner as water carrier on daily wages w.e.f. 21.7.1997 to 29.9.1997 be considered for the purpose of seniority and whole time contingent

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paid worker in view of rulings of Hon'ble High Court of H.P. announced in CWP No. 859 of 2010 titled Rishi Pal vs. State of H.P. and others decided on dated 24.5.2010 and in view of CWP No. 5444 of 2010 titled Jeet Ram vs. State of H.P. and others decided on dated 28.9.2011 is rejected being devoid of any force for the reasons mentioned hereinafter. Court has carefully perused the above said orders passed by Hon'ble High Court of H.P. in aforesaid CWPs carefully. In both CWPs,Hon'ble High Court of H.P. did not announce that if a person is appointed on daily wages purely on temporary basis as stop gap arrangement against the leave vacancy even then benefit of stop gap arrangement service would be given to the employee for the purpose of seniority and regularization. Court has carefully perused the office order passed by the Principal Government Collage Chaura Maidan Shimla dated 21. 7.1997 wherein the petitioner was appointed on daily wages purely on temporary basis as stop gap arrangement.

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6. It is proved on record that appointment of the petitioner as water carrier was (1) Purely on temporary basis. (2) The appointment of petitioner was as stop gap arrangement. There is recital in office order that service of the petitioner would stand terminated automatically on joining of regular employee. There is further recital in office order that amount would be paid to the petitioner from the College Amalgamated Fund according to rates approved by H.P. Government. Copy of office order was supplied to the petitioner. After receiving the office order the petitioner has himself voluntarily accepted the condition of office order dated 21.7.1997. Petitioner has voluntarily accepted that he would work (1) Purely on temporary basis as stop gap arrangement. (2) Petitioner has admitted that his service would be terminated automatically on joining of regular employee. Court is of the opinion that petitioner has voluntarily accepted the terms and conditions of the conditional appointment order. It is held that petitioner cannot be allowed to approbate and reprobate the conditional appointment order dated 21.7.1997. Petitioner has himself admitted that he would work purely on temporary basis as stop gap arrangement and petitioner has himself admitted that his service would automatically terminate after joining the regular employee who was proceeded on leave. It was held in case reported in AIR 1989 SC 696 titled Haribans Misra and others vs. Railway Board and others that person appointed on ad- hoc basis cannot claim lien on post to which he was so appointed. It was hled in case reported in AIR 1992 SC 2070 titled Director Institute of Management Development UP vs. Smt. Pushpa Srivastava that appointment on contractual basis is only for a limited period and after expiry of period of contract post comes to an end automatically. It is well settled law that when there is conflict between judgments of Hon'ble Apex Court of India and Hon'ble High Court then judgment announced by Hon'ble Apex Court of India always prevails as per Constitution of India. It is well settled law that employee is appointed in particular cadre of post only upon the availability of vacancy and after recommendation of Selection Committee constituted by competent authority in accordance with law. As per Article 309 of Constitution of India recruitment and conditions of public service of

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Union or State are governed by Rules framed by competent authority of law and Rules so framed shall have effect subject to the provision of any Act. It is also well settled law that employee cannot be appointed on public post contrary to Rules framed by Union or State as per Article 309 of Constitution of India. It is well settled law that Constitution of India is supreme and all public authorities are under legal obligation to strictly comply the provision of Constitution of India. Petitioner did not place on record any evidence in order to prove that as of today vacancy of whole time contingent worker is available in the department. Petitioner also did not place on record any evidence on record in order to prove that his name has been recommended by competent authority of law for appointment as whole time contingent worker. In view of above facts point No. 1 is answered in negative."

8(ii)b) It is also profitable to refer to judgment passed by a Coordinate Bench of this Court in CWP No.10059 of 2012, titled Surender Kumar Vs. State of H.P. and others, which was upheld in LPA No.59 of 2016,:-

"7. .....

Above stated working days remain un-rebutted on record. There is no positive, cogent and reliable evidence on record that petitioner has worked for more than the days mentioned supra. It was held in case reported in 1994 Supp (2) SCC 6 316 titled Mool Raj Upadhyaya Vs. State of HP and others that employee who has completed 240 days in a calendar year should be appointed as work charge employee. There is no evidence on record that petitioner has completed 240 days continuously in a calendar year. On the contrary it is proved on record that petitioner was appointed as stop gap arrangement on daily wage. Also see Latest HLJ2015 HP 93 titled Mohd. Ali Vs. State of HP and others. It is held that in public post automatic appointment is not warranted. Appointment on public post is always conducted through selection process and through recommendation of selection committee in accordance with law. There is no evidence on record that petitioner was appointed by way of proper advertisement selection process and there is no evidence on record in order to prove that petitioner was appointed by selection committee constituted in accordance with law. Regularization of service by way of back door entry is not permissible under law upon public post . On the contrary it is proved on record that petitioner was appointed as stop gap arrangement only on daily wage . RW1 Satinder Thakur Block Development Officer Karsog appeared before learned Labour Court in person and deposed that no work is available in the office for the petitioner as regular driver Sh Hem Singh is working in the office. It is proved on record that there is only one post of driver in the office of non-petitioner No.2 i.e. Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur has stated in positive manner when he appeared in witness box before learned Labour Court that Sh Hem Singh was appointed as driver in the year 2008 in the office of Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur Block Development Officer has stated in positive manner that petitioner did not work for more than 240 days in

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a calendar year. RW1 has further stated in positive manner that no fictional breaks was given to petitioner. Testimony of RW1 Satinder Thakur Block Development Officer Karsog is trust worthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of RW1 Satinder Thakur. There is no evidence on record in order to prove that RW1 Satinder Thakur has hostile animus against petitioner at any point of time."

8(ii)c) Another Judgment passed by a Division Bench of this Court in CWP No.4287 of 2014, titled Chander Mohan Vs. Union of India and others, read as under:-

"4. The Tribunal, after examining the pleadings, held that the petitioner had not participated in the regular selection process but was engaged as substituted driver. It is apt to reproduce paras 9 and 10 of the impugned judgment herein.

"9. Learned counsel for the respondents asserted that it was a policy decision of the respondent No.1 to fill the post of drivers and cleaners in the MMS units through outsourcing. The applicant had only been engaged as paid substitute driver as a stop-gap arrangement and this could not be treated as proper advertisement for recruitment to the post of driver. He further stated that the applicant could not be appointed to the post without going through the recruitment process which includes advertisement in the media requisition to the Employment Exchange etc. and therefore the applicant had no claim for regularization as driver.

10.We have given our thoughtful consideration to the matter. It is evident from the medical on record that the appointment of the applicant as substitute driver was a mere stop-gap arrangement and did not entitle the applicant who is basically a GDS to continue as such. Moreover the claim in this O.A. and the facts are distinguishable from those in O.A. No.79/2007 decided by the Ernakulum Bench and the citation is not relevant. Hence there is no merit in the present O.A. and the same is rejected. No costs."

5. On the face of it, the petitioner has no right to seek regularization or any other relief.

6. Having said so, the Tribunal has rightly made the discussion and passed the impugned judgment, needs no interference. The wit petition merits dismissal and is accordingly, dismissed alongwith pending applications, if any."

8(ii)d) In judgment of Hon'ble Apex Court, reported in 2009) 17 SCC 326 titled Ajnala Cooperative Sugar Mills Limited Vs. Sukhraj Singh, it was held as under:-

"5. This Court in several cases has held that the workman has to prove that the he has worked for more than 240 days.(See: Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25), Essen Deinki v. Rajiv Kumar (2002 (8) SCC 400, Batala Coop.Sugar Mills Ltd. v. Sowaran Singh (2005 (8) SCC 481).

6. In Batala Coop. Sugar Mills (supra) it was observed as under: (SCC p.483,

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para 8)

"8. We find that the High Court's judgment is unsustainable on more than one count. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan and Ors. (1995 (5) SCC 653) it was observed as follows: (SCC p.654,paras 4-5)

'4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work.

7. Learned counsel for the appellant is correct that it was for the workman to establish that he had worked for more than 240 days. Learned counsel for the respondent has referred to certain materials which have been filed as additional documents in this case. These were not part of the records before the Labour Court or the High Court. It appears that the High Court did not examine the issues in the proper perspective as to whether the Labour Court did not specifically deal with the stand of the appellant that the workman had not completed more than 240 days as he was working as a seasonal daily wager and after the season was over there was no engagement."

8(ii)e) Hon'ble Apex Court, in (2018) 15 SCALE 352, titled State of Bihar & Ors. Vs. Kirti Narayan Prasad, held as under:

"13. In Umadevi (supra) the Constitution Bench has held that unless appointment is made in terms of the relevant rules and after a proper compensation among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment, the appointment comes to an end at the end of the contract, if it was an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. A temporary employee could not claim to be made permanent on the expiry of his term of appointment. It was also clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance,if the original appointment was not made by following a due process of selection as envisaged by the relevant rules....."

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8(ii)f) Hon'ble Apex Court, in (2005) 8 SCC 750, titled Surendranagar District Panchayat Vs. Dahyabhai Amarsinh, held that it was for workman to prove having worked continuously for 240 days:-

"18. 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 noncompliance 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."

8(iii) It has also been held by Hon'ble Apex Court in 2014 (11) SCC 85, titled Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd., that the findings of fact recorded by the learned Labour Court after appreciating the evidence cannot be interfered in writ petition, unless the same are result of patent mistakes or grave errors of law.

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8(iv) In the instant case, it stands proved that:

a) Engagement of petitioner was only on monthly bill basis.

b) Period of engagement of petitioner on bill basis was 02.05.2008 to 31.08.2008.

c) Petitioner stands paid on bill basis for the period 02.05.2008 to 31.08.2008. Though petitioner is claiming backwages from 31.12.2009 onwards, however, it is not even his case, that any payment subsequent to 31.08.2008 to 31.12.2009 has been made to him.

d) Petitioner himself admits that he was engaged during leave period of regular driver (Jai Singh). Thus his engagement was of stop-gap in nature on bill basis.

e) There is no evidence on record either documentary or oral to show that the petitioner worked continuously subsequent to 31.08.2008 till 31.12.2009, as is the case set up in claim petition.

f) Production of log book, petrol bills & machinery advance bills do not advance the case of the petitioner in any manner.

g) There is no evidence that juniors to the petitioner have been retained. Respondents in their evidence have given details of man-days chart of the petitioner as Ext.RW1/C as well as details of working of different drivers with justification, who worked during leave period of regular driver Sh. Jai Singh, by means of Ext.RW1/D.

9. Thus, in view of above discussions, there is no merit in the writ petition and the same is accordingly dismissed, so also the pending application, if any.

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