
(2010) 05 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4304 of 2005 (S)

Sanjay Kumar Sharma

APPELLANT

Vs

Chief Executive Officer, Janpad Panchayat

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Citation : (2010) 127 FLR 170 : (2010) 4 LLJ 686 : (2010) 3 MPJR 306 : (2010) 3 MPLJ 457

Hon'ble Judges : N.K. Mody, J;I.S. Shrivastava, J

Bench : Division Bench

Judgement

This order shall also govern disposal of W.P. No. 4564/2005(S) as in both the petitions parties are one and the same and the impugned order is also one and the same.

Being aggrieved by the judgment dated April 1, 2005 passed by the Labour Court, Ratlam in Case No. 176/ID Act/03 Reference, whereby Petitioner was reinstated without backwages, the present petition has been filed.

In W.P. No. 4564/2005(S) petition has been filed by the employer being aggrieved by the order of reinstatement.

Short facts of the case are that Petitioner was appointed on September 30, 1995 as daily rated employee for a period of 89 days. The services of the Petitioner were discontinued w.e.f. December 6, 1999. Upon reference Petitioner submitted his claim alleging that the order dated December 6, 1999, whereby the services of the Petitioner were discontinued was illegal, no charge-sheet was given to the Petitioner, no departmental enquiry was held, Respondent worked from 1995 to 1999 regularly uninterruptedly and in each of the year the Petitioner worked for more than 240 days. It was alleged that before terminating the services of the Petitioner no retrenchment compensation was paid to the Petitioner, similarly no notice was issued. It was prayed that order of termination to Petitioner be quashed and Petitioner be reinstated with backwages. In reply submitted by the

Respondent it was not disputed that Petitioner was appointed on September 30, 1995 as daily rated employee for a period of 89 days. It was alleged that before his appointment it was made clear that the services of the Petitioner is purely temporary in nature and the Petitioner can be discontinued after completion of the period of 89 days at any time without any notice. It was alleged that in the facts and circumstances of the case Petitioner is not entitled for any relief. On the basis of the pleadings of the parties learned trial Court framed the issues, recorded the evidence and directed to reinstate the Petitioner without backwages, against which both the parties have filed the petitions before this Court.

Learned Counsel for the Respondent submits that the order of reinstatement is illegal and deserves to be quashed. It is submitted that services of the Petitioner were purely temporary in nature, therefore, there was no justification on the part of the Court below to reinstate the Petitioner. It is submitted that burden to prove that the Petitioner has completed the work for more than 240 days in a year was on the Petitioner and the Petitioner failed to prove the same, therefore, there was no occasion to reinstate the Petitioner. It is submitted that petition be allowed and the impugned order of reinstatement be set aside.

Learned Counsel for the Petitioner submits that the burden to prove was initially on the Petitioner that the Petitioner has worked for more than 240 days. To prove the fact Petitioner examined himself and has stated categorically that Petitioner worked for more than 240 days in each, of the year. It is submitted in rebuttal there is no cogent evidence adduced by the Respondent. It is submitted that in the facts and circumstances of the case there was no justification on the part of learned Court below in not awarding the backwages. It is submitted that petition filed by the Petitioner be allowed and the backwages be awarded.

In the matter of Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda, , wherein Workman hired on daily wages basis deposed that he had worked for 240 days during the period between 1985 to 1991 Hon"ble Apex Court held that burden of proof shifts to the employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. From perusal of record it is evident that to prove the case the Petitioner has examined himself and has stated that the Petitioner has worked from September 30, 1995 continuously upto 1999. He has further stated that he has been regularized vide order dated April 1, 1999 and his services were terminated vide order dated December 6, 1999 without any notice and enquiry. To rebut the case of the Petitioner, Respondent examined K.C. Sharma, Chief Executive Officer, who has stated that Petitioner was appointed vide order dated September 30, 1995 for a period of 89 days temporarily and his services were terminated vide order dated December 6, 1999. On October 7, 2004 time was granted to this witness to produce the record to demonstrate that Petitioner has not worked for more than 240 days in any calendar year and the case was adjourned to October 28, 2004. Again the case was adjourned for November 18, 2004,

December 9, 2004 and January 13, 2005 but the witness never turned up and lastly the case proceeded ex parte against the Respondent. From the record it is evident that the resolution Nos. 5 and 7 were passed by the Respondent, wherein it is resolved that the Petitioner is working continuously w.e.f. September 30, 1995 and has completed his services of four years. It was also resolved that the Petitioner be regularized on the post of Clerk, Vide resolution dated March 30, 1999 resolution No. 7 dated March 30, 1999 it is again resolved that Petitioner is regularized w.e.f. April 1, 1999. A show cause notice was issued on October 8, 1999 vide Exhibit D/I, whereby Petitioner was asked why his regularization should not be cancelled. This notice does not bear the signature of the Petitioner and Petitioner denies acknowledge receipt of the said notice Exhibit D/1. Vide order dated May 11, 2000 resolution Nos. 5 and 7 has been cancelled by Collector, Ratlam. In the facts and circumstances of the case and after applying the principles laid down in the matter of Director, Fisheries Terminal Department v. Bhikubhai Meghajighai Chavda (supra) this Court is of the view that the evidence produced by the Petitioner was sufficient to prove that the Petitioner has worked for 240 days. Petitioner was a workman hired on a daily wage basis. So it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in the opinion of this Court burden of proof shifts on the Respondent herein to prove that Petitioner did not complete 240 days of service in the requisite period to constitute continuous service. In the matter of Municipal Corporation, Faridabad Vs. Siri Niwas, Hon''ble Apex Court has observed that a Court of law even in a case where provisions of Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. In the facts and circumstances of the case, this Court is of the view that the learned trial Court rightly allowed the petition filed by the Petitioner and set aside the order of termination. This Court is of the view that keeping in view the factual situation there was no justification on the part of the learned Court below in not awarding the backwages. However, keeping in view the fact that Petitioner remained out of job from December 6, 1999 till the order of reinstatement is passed, therefore, it is directed that Petitioner shall be entitled for 50% backwages. In view of this petition filed by the Petitioner is allowed and the petition filed by the Respondent stands dismissed. No order as to costs. Copy of this order be also placed in the connected case.