
(2005) 07 DEL CK 0072

In the Delhi High Court

Case No : LPA 1624, 1625 and 1626 of 2005

Smt. Kanta (deceased) through LRs.

APPELLANT

Vs

MTNL

RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2005) 83 DRJ 598 : (2006) 1 LLJ 573

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Mahesh Srivastava, for the Appellant; Ravi Sikri and Manish Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.

CM No. 10177/2005

1. Notice. Mr. Ravi Sikri, counsel for the respondent accepts notice.
2. Heard learned counsel for the parties. The delay of 21 days in filing the appeal is condoned and the application is allowed.

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3. The appellant is aggrieved by the order passed in Writ Petition (Civil) No. 1995/2000 allowing the writ petition filed by the Management against the order dated 17th August, 1999 of the Labour Court. In terms of the award the appellant was directed to be reinstated with back wages and continuity of service.
4. The appellant had been appointed against leave vacancy and the working days calculated in respect of her are 193 days up to the date of her termination on 11th February, 1988. The Management supported its case by contending that the appellant had worked only for 193 days and that she could not avail the benefit

of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act"). The plea of the appellant before the learned Single Judge was that the appellant had worked for 240 days.

5. The learned Single Judge relying upon the judgment of the Apex Court in *The Range Forest Officer v. S.T. Hadimani* reported in 2002 LLR 339 wherein the Apex Court held that it was responsibility of the appellant as a workman to lead evidence to show that she had, in fact, worked for 240 days in the year preceding her termination. It was further held that the mere filing of an affidavit cannot be regarded as a substantive evidence that the workman had been on the job for 240 days in a year. Thus, the conclusion of the Labour Court that the burden had not been discharged by the Management was held to be erroneous.

6. On a specific query posed, learned counsel for the appellant has not been able to point out from the deposition of the appellant as to where it has been stated by her that she worked for 240 days. In this behalf, our attention has been drawn to Annexure E which is the deposition of the appellant and it is nowhere stated by her that she worked for 240 days. The contention of the learned counsel for the appellant is that this should be implied from the deposition.

We are unable to accept this contention. The onus is on the workman to satisfy that she worked for 240 days. Leave aside discharging the onus, even an averment in the deposition is not found in this behalf.

7. In two recent judgments of the Apex Court *Chief Engineer (Construction v. Keshava Rao (D)* by LRs. 2005 (2) SCC 604 and *Manager, RBI Bangalore v. S Mani and Ors.* 2005 (2) Scc 589 the court has held that the initial burden of establishing factum of continuous work for 240 days within a year was on the workman. These judgments followed the view taken earlier in *The Range Forest vs. S T Hadimani* (supra).

8. In our considered view, the learned Single Judge has rightly arrived at the conclusion that the workman had failed to establish that she has worked for 240 days in the year preceding her termination and in view thereof, the reasoning of the Tribunal could not be sustained.

9. We find no infirmity in the impugned order and the appeal is dismissed.