
(2010) 04 MP CK 0053
In the Madhya Pradesh High Court

Smt. Sunita Gupta

APPELLANT

Vs

Nagar Palika Parsishad and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25B, 25F

Citation : (2010) 126 FLR 581 : (2010) ILR (MP) 1600 : (2011) 2 LLJ 798 :
(2010) 3 MPHT 243 : (2010) 2 MPLJ 644

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

Bench : Division Bench

Judgement

Heard.

The petitioner has filed this petition challenging the award, Annexure P-1, dated 20.07.2004 passed by the Labour Court in Case No. 45/I.D. Act/2001 (Reference).

The petitioner was engaged as daily wager employee w.e.f. 01.09.1998. She pleaded that she had been working as Moharrir up to 1st May 1999. Thereafter, she was transferred to health branch and worked up to October 1999. She was again transferred to Revenue Branch and where she worked up to 13.03.2000. Thereafter, her services were orally terminated by the Chief Municipal Officer. The petitioner made a complaint to the appropriate Government against her termination from service. The matter was ceased in conciliation and after failure of conciliation proceedings the Deputy Labour Commissioner vide order dated -7.03.2001 made a reference to the Labour Court u/s 10(1) of the Industrial Disputes Act, 1947.

In her deposition before the Labour Court the petitioner stated that she was engaged on daily wage basis on 01.09.1998 and worked as Moharrir. Thereafter, she was transferred to health branch and revenue branch and by an oral order her services were terminated w.e.f. 13.03.2000. She also produced copy of the service-book as Ex.P-1, in which it was certified that the petitioner had been

working as Clerk from 01.09.1998 to 26.07.99. The Chief Municipal Officer also issued a certificate, Ex.P-2 certifying that the petitioner had been working w.e.f. 23.09.98 to 26.07.99. Similar certificate was issued by the Municipal Council, Ex.P-2 and as per note-sheet, Ex.P-6, it is clear that the petitioner had been in the employment of respondent No. 1 in June 1999. On the basis of aforesaid evidence, the Labour Court has held that the petitioner had worked up to 26th July 1999, however, the Labour Court further held that the petitioner had worked only for four months w.e.f. 14.03.99 to 26.07.99, hence the petitioner has failed to prove that the petitioner had worked for 240 days in twelve months prior to 13.03.2000, therefore, there is no violation of Section 25F of the Industrial Disputes Act. Consequently, the Labour Court answered the reference against the petitioner.

Learned Counsel for petitioner has submitted that the petitioner has worked for more than 240 days in a calendar year, hence the findings of the Labour Court that there is no violation of the provisions of Section 25F of the Industrial Disputes Act are perverse. In support of his contentions learned Counsel relied on the judgment of the Hon"ble Supreme Court in the cases of Surendranagar District Panchayat Vs. Dahyabhai Amarsinh, , and General Manager, Haryana Roadways v. Rudhan Singh 2005 (II) MPJR 236.

Contrary to this, learned Counsel for respondent No. 1 has submitted that the petitioner did not work 240 days in a calendar year, hence the finding of the Labour Court that there is no violation of Section 25F of the Industrial Disputes Act is in accordance with law. In support of his contentions learned Counsel relied on a judgment of the Hon"ble Supreme Court in the case of Rajasthan Tourism Development Corporation Ltd. and Anr. v. Intejam Ali Zafri 2006 (4) MPLJ 294.

From the findings of fact which is based on the documentary and oral evidence, it is clear that the petitioner was engaged on 01.09.1998 and the findings recorded by the Labour Court is that she was in the employment up to 26.07.99 is accepted. The aforesaid fact has been mentioned in the service-book of the petitioner, copy of the service-book of the petitioner is Ex.P-1 and also a certificate issued by the Chief Municipal Officer are Exs.P-2, P-5 and P-6. From the aforesaid evidence, it is clear that the petitioner had been working continuously from 01.09.98 up to 26.07.99 and she has worked for about ten months, meaning thereof she had worked near about for 300 days. As per Section 25B of the Industrial Disputes Act, it is necessary that the workman or a person has to work for 240 days in preceding twelve months.

Hon"ble the Supreme Court in General Manager, Haryana Roadways v. Rudhan Singh 2005 (II) MPJR 236, has held as under with regard to continuous service as per Section 25B of the Industrial Disputes Act, 1947:

Held: Act 36 of 1964 has drastically changed the position. Section 2(eee) has been repealed and Section 25B(2) now begins with the Clause "where a

workman is not in continuous service...for a period of one year." These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months" it is not necessary that he should have been in the service of the employer for one whole year....

Same principle has been laid down by Three Judges Bench of the Hon''ble Supreme Court in the case of Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, , where the Hon''ble Supreme Court has held as under:

After the Amendment Act of 1964, it is not necessary that an employee must have been in employment during the preceding period of 12 calendar months in order to qualify within the terms of Section 25B. It is sufficient if the workman has actually worked for not less than 240 days in a period of 12 months.

Hon''ble the Supreme Court in U.P. Drugs and Pharmaceuticals Company Limited Vs. Ramanuj Yadav and Others, has analyzed the position after amendment of Section 25B by Industrial Disputes (Amendment) Act, 1964, which came in to force w.e.f. 19.12.1964. The Hon''ble Supreme Court has held as under:

8. Section 25B was, however, substituted by the Industrial disputes (Amendment) Act, 1964 (36 of 1964) w.e.f. 19.12.1964 and the same reads as under:

25B. Definition of continuous service.- For the purposes of this Chapter:-

(1) a workman shall be said to be in continuous service for a period if he is, for the period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar

months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purpose of Clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

The amending Act of 1964 deleted Section 2(eee), having incorporated in Section 25B itself the definition of "continuous service". It also brought in the concept of preceding twelve calendar months. The earlier definition did not mention "preceding" with reference to the period of twelve calendar months. It appears that the decision of this Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, , interpreting Sections 2(eee) and 25B led to the amendments made by the amending Act of 1964. In *Sur Enamel* interpreting Sections 2(eee) and 25B, it was held that twin conditions were required to be fulfilled before a workman can be considered to have completed one year of continuous service in an industry. It must be shown first that the workman was employed for a period of not less than twelve calendar months and next that during those twelve calendar months, he had worked for not less than 240 days. In that case, the workman had not been employed for a period of twelve calendar months. Therefore, the Court held that it was unnecessary to examine whether actual days of work were 240 or more more than in any case the requirements of Section 25B would not be satisfied by the mere fact of number of working days being not less than 240 days. The effect was that if a workman completes actual 240 or more days of work in less than twelve calendar months, he would not be entitled to the benefit of beneficial legislation. This anomaly led to the amendment of the ID Act in the manner above stated.

From the aforesaid principle of law laid down by the Hon''ble Supreme, it is clear that after the amendment in Section 25B of the Industrial Disputes Act, 1947 by Amendment Act of 1964, it is not necessary that an employee must have in employment during the preceding 12 calendar months in order to qualify within

the terms of Section 25B. However, it is sufficient if the workman has actually worked for not less than 240 days in a period of 12 months. In the present case, the petitioner has clearly established that she has worked for more than 240 days in 12 months from the date of her termination of her services. In such circumstances, the termination of the services of the petitioner without following the provisions of Section 25F of the Industrial Disputes Act, 1947 is void ab initio. Consequently, the petitioner is entitled reinstatement.

With regard to grant of back wages, Hon"ble the Supreme Court in the case of State of Maharashtra and Others Vs. Reshma Ramesh Meher and Another, , has held as under:

24. It is true that once the order of termination of service of an employee is set aside, ordinarily the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back wages, which is independent of reinstatement. While dealing with the prayer of back wages, factual scenario, equity and good conscience, a number of other factors, like the manner of selection, nature of appointment, the period for which the employee has worked with the employer etc., have to be kept in view. All these factors and circumstances are illustrative and no precise or abstract formula can be laid down as to under what circumstances full or partial back wages should be awarded. It depends upon the facts and circumstances of each case.

In the present case, the petitioner worked only for a brief period near about 300 days. The petitioner had been engaged on daily wage basis. In such circumstances, in our opinion, it would not be just and proper to grant back wages to the petitioner.

Consequently, the petition of the petitioner is disposed of with the following directions:

- (1) The impugned award dated 20.07.2004 passed by the Labour Court in Case No. 45/I.D. Act/2001 (Reference) is hereby quashed.
- (2) It is held that the petitioner is entitled reinstatement without back wages.
- (3) The reference made to the Labour Court by the Deputy Labour Commissioner is answered accordingly.
- (4) Looking to the facts of the case, parties are directed to bear their own costs.