

(2011) 12 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 17689 of 2011

State of Madhya Pradesh

APPELLANT

Vs

Shri Ram Kripal Verma

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2012) 132 FLR 768

Hon'ble Judges : Vimla Jain, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Piyush Dharmadhikari, for the Appellant;

Final Decision : Dismissed

Judgement

Krishn Kumar Lahoti, J.—This petition is directed against an award dated 31.8.2010 passed by the Labour Court, Satna in Case No. 92 of 2005 I.D. Act (Reference) by which the Labour Court directed reinstatement of the respondent without back wages. Learned counsel for the petitioners submitted that (i) the reference was filed after 16 years long delay and the labour Court erred in directing reinstatement. (ii) That the respondent failed to prove that he had worked for more than 240 days from the date of retrenchment but the labour Court by drawing adverse inference against the petitioners recorded a finding that the respondent worked for 240 days in the last year. Reliance is placed on a judgment of the Apex Court in State of Maharashtra Vs. Dattatraya Digamber Birajdar,

2. To appreciate the contention of the petitioners, we have perused the record. The Labour Court while deciding the aforesaid reference has recorded findings after appreciating the evidence. In para 7 of the judgment the Labour Court has found that the respondent Ram Kripal worked under the petitioners from 1978 to 1987, subsequently he was converted as Commission Vendor in the year 1987 and in the same year he was retrenched. No retrenchment compensation was paid to him at the time of retrenchment. Thereafter he was assured for the

reinstatement. But when he was not reinstated, he had approached to the Assistant Labour Commissioner on 26.8.2003 for the relief. The matter was referred to the Labour Court by the Dy. Labour Commissioner, Indore. Before the Labour Court, the respondent moved an application for production of the record which the petitioners herein had failed to produce. The record is with the petitioners and if they had failed to produce the same, and the Labour Court has drawn adverse inference, no fault is found. The submission of the respondent before the Labour Court was that he had worked between 1978 and 1987 and he was retrenched without following the provisions of Section 25F of the Industrial Disputes Act. Initially the burden was on respondent but when he had discharged, then the burden was on the petitioners to rebut the aforesaid. In spite of moving two applications the relevant records were not supplied and the Labour Court has rightly drawn an adverse inference against the petitioners. In *Dattatreya* (supra) the factual position was entirely different. In para 6 of the judgment the Apex Court has considered the factual position and has laid down the law. For ready reference para 6 of the aforesaid judgment is quoted which reads thus :-

It is to be noted that in the written statement, it has been clearly stated by the present appellant about the respondent having left the employment of the appellant's establishment for joining another department and ultimately being terminated from the said department. Exhibit C-25 dated 10.3.1986 is the document showing place of posting. Exhibit C-26 dated 18.3.1996 shows, that respondent was appointed and was required to join from 3.4.1986. Exhibit C-27 is the transfer order of the respondent by order dated 25.9.1986 and the letter dated 9.3.1995 clearly shows that the respondent had joined at Paranda at the transferred place to which he was transferred. It is crystal clear that ample material and evidence were placed before the Labour Court to justify the stand that with effect from 3.4.1986 respondent was not in the employment of the appellant. He himself had voluntarily left the department to join another department. In any event, the claim was stale and was filed after about eight years of the alleged order of termination. Labour Court and the High Court erroneously held that the burden to prove engagement of 240 days lies on the employer. The view is clearly contrary to what has been stated by this Court in *The Range Forest Officer Vs. S.T. Hadimani*,

3. The factual position in the present case is entirely different. In this case the respondent had worked for a period of near about 10 years and thereafter he was retrenched and in spite of filing of Annexure P-1 and P-3, the relevant records were not produced. In these circumstances the Labour Court has rightly drawn adverse inference against the petitioners.

4. So far as the delay in filing reference is concerned, the Apex Court has considered this question in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, and *U.P. State Electricity Board Vs. Rajesh Kumar*, held that no period of limitation is prescribed for

making a reference. Facts and circumstances of each case is to be considered in dealing with stale claims and appropriate reliefs to be granted. In that case reference was made after 19 years. Such question was not raised before the Labour Court and was raised for the first time before the High Court. In such circumstances, the Apex Court found that merely on the ground of delay such reference should not be dismissed and each case should be examined in the facts and circumstances of the case. On the ground of delay, back wages can be denied. In the present case, the Labour Court has denied back wages to the respondents which order appears to be just and proper. In view of the aforesaid, no fault is found in the findings recorded by the Labour Court, warranting our inference under Art. 227 of the Constitution of India. This petition is found without merit and is dismissed with no order as to costs.