

(2018) 02 MP CK 0225
In the Madhya Pradesh High Court
Case No : 2439 of 2014

**The Director Central Farm Machinery Training & Testing Institute Vs
Smt. Umami Bai**

Date of Decision : 20-02-2018

Acts Referred:

[Constitution of India](#), [Article 227](#) -
Power of superintendence over all courts by the High Court
[Code of Civil Procedure, 1908](#), [Order 18 Rule 4](#) -
[Order 18 Rule 4](#)

Citation : (2018) 02 MP CK 0225

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : P. Shankaran, Pranay Choubey

Judgement

1. This petition filed under Article 227 of the Constitution takes exception to the award of the Central Government Industrial Tribunal-cum-Labour

Court (hereinafter referred to as "the Tribunal") passed in Case No.CGIT/LC/R/155/1997 whereby the industrial dispute/reference is answered in

favour of the respondent-workman.

2. Shri P. Shankaran, learned counsel for the employer contended that the workman filed certain original applications challenging the very same

termination and grant of temporary status before the Central Administrative Tribunal (hereinafter referred to as "the Administrative Tribunal"). These

applications were decided by common order dated 18.03.2002 (Annexure-P/2). The Administrative Tribunal gave a specific finding that workman

has not worked for 240 days in a calendar year and the Administrative Tribunal expressed its inability to examine the relief pertaining to the validity

of termination of the workman. The Administrative Tribunal opined that so far

termination and grant of retrenchment compensation etc. are

concerned, the said aspects of ID Act cannot be given into by the Tribunal. Thereafter, the workman raised the industrial dispute which was

decided by impugned award.

3. Criticizing this award, Shri Shankaran advanced three fold submissions. Firstly, in view of clear findings of Administrative Tribunal that the

workman has not worked for 240 days in a calendar year, there was no occasion for the Industrial Tribunal to give a contrary finding and hold that

the employer has violated Section 25-F of ID Act, 1947. Secondly, although the employer was put to notice initially by the Tribunal and in turn,

the employer filed a communication dated 28.02.2006 (Annexure-P/4) before the Tribunal, no further notice was given by the Industrial Tribunal

with the intention to proceed ex parte against the employer. Thirdly, the Tribunal erred in granting relief to the workman.

4. Per contra, Shri Pranay Choubey supported the award. He submits that whether or not the workman has completed 240 days in a calendar

year, Section 25-G will be applicable and workman by leading credible evidence proved that while terminating the workman, the employer has

retained the juniors thereby violated settled principles of industrial jurisprudence, namely, ""first come last go"". He supported the impugned order by

contending that the order is based on the pleadings and evidence on record.

5. Shri Shankaran in his rejoinder submission contended that the Tribunal erred in believing the affidavit of the workman as a gospel truth. If proper

opportunity would have been granted to the employer, they would have been in a position to cross-examine the workman and refute the claim that

she had worked for 240 days continuously preceding her termination.

6. No other point is pressed by learned counsel for the parties.

7. I have heard learned counsel for the parties and perused the record.

8. Admittedly, the Tribunal put the employer to notice on 07.12.2005 (Annexure-P/3). The employer admittedly filed response on 28.02.2006

(Annexure-P/4). Learned counsel for the petitioner is unable to show any provision from Industrial Disputes Act or the Rules made thereunder

which makes it obligatory on the Tribunal to again put the employer to notice when he is admittedly served and filed his short response (Annexure-

P/4). In absence thereof, I am unable to hold that sufficient and adequate opportunity of defence was not given to the employer by the Tribunal.

Thus, there is no procedural impropriety on the part of the Tribunal which warrants interference by this Court.

9. I find substance in the argument of Shri Shankaran that in view of finding of Administrative Tribunal that the workman has not worked for 240

days in a calendar year, there was no occasion for the Industrial Tribunal to invoke Section 25-F of the ID Act. However, it is apt to examine

whether the award of the Tribunal can still sustain if findings in relation to violation of Section 25-F are quashed. This aspect is no more res integra.

The Supreme Court in 2006 (1) SCC 530 (Regional Manager, SBI Vs. Rakesh Kumar Tiwari), 1996 (5) SCC 419 (Central Bank of India Vs. S.

Satyam), 1999 (3) SCC 14 (Samishta Dubey Vs. City Board, Etawah), 2006 (1) SCC 530 (SBI Vs. Rakesh Kumar Tewari), 2006 (11) SCC

684 (Jaipur Development Authority Vs. Ram Sahai) and in 2006 (13) SCC 28 (Bhogpur Cooperative Sugar Mills Ltd. Vs. Harmesh Kumar) and

in its recent judgment reported in 2015 (6) SCC 321 (Ajaypal Singh Vs. Haryana Warehousing Corporation) clearly held that Sections 25-G and

H are applicable irrespective of non-performance of duty by workman for continues 240 days. In other words, whether or not the workman has

worked for 240 days, the legislative mandate ingrained in Section 25-G will be applicable. In view of the settled principles, even if the award is

held to be incorrect to the extent of violation of Section 25-F was noticed, the award deserves to be upheld to a great extent in the teeth of Section

25-G of ID Act, 1947. The petitioner in support of his statement of claim, entered the witness box and filed his affidavit under Order 18 Rule 4

CPC. The employer has taken a calculated risk and did not participate in the proceedings despite receiving notice and, therefore, it cannot be said

that the Tribunal has erred in believing the statement of workman. Nobody prevented the employer to file written statement and relevant

documents to put forth their defence. A party cannot take benefit of its own lethargy or inaction by filing writ petition. This equitable remedy is not

available to a sleeping litigant. For this reason, I am not inclined to interfere in the award. The Tribunal has granted compensation in lieu of

reinstatement and. in addition, granted retrenchment compensation. Since the workman has not worked for 240 days, the direction regarding grant

of retrenchment compensation cannot sustain judicial scrutiny. To that extent, the award is set aside. Rest of the award is upheld. Petition is partly allowed.