

(2017) 12 MP CK 0003
In the Madhya Pradesh High Court
Case No : 4907 of 2016

The Manager

APPELLANT

Vs

Aminuddin

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Industrial Disputes Act, 1947, Section 25F,
Section 25G

Citation : (2017) 12 MP CK 0003

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : Permanand Dubey, Arvind Kumar Shrivastava

Final Decision : Dismissed

Judgement

1. The petitioner has filed the present petition,
under Article 227 of the Constitution of India, challenging the
award dated 23/12/2015 passed by the Presiding Officer,
Labour Court, Sagar, District Sagar.
2. Brief facts of the case are that the
respondent was engaged from time to time with the
petitioner on the basis of availability of the work, but respondent started picking
up quarrels with the superior
officers demanding whole month work and salary on the
basis of collector's notification meant for labours other than
agricultural labours. She herself abandoned the work in the

year 2007 and, therefore, she was again offered to continue work as seasonal labour, but again she started creating problems and refused to accept the wages calculated on the basis of notification. The respondent thereafter filed dispute before Presiding Officer Labour Court on 17/02/2014. The petitioners filed reply to the said application. Thereafter, the petitioners moved an application on 20/08/2015 for taking some material documents on records, but the trial Court has dismissed the said application. Thereafter, the labour Court has passed the impugned award by which the labour Court has directed to reinstate the respondent along with back wages. Being aggrieved by that award, the petitioner has filed the present petition.

3. Learned counsel appearing on behalf of the petitioner argues that the award passed by the labour Court is illegal and arbitrary. He submits that the labour Court has failed to consider that the respondent was working as seasonal labour and was engaged in the petitioner's organisation as per the availability of the work. The labour Court has committed jurisdictional error by shifting the burden of proof relating to 240 working days on the present petitioners. He submits that the respondent has failed to prove that during the last 25 years of her working as seasonal labour, she has completed one year's service or 240 days service in order to attract the Section 25-F of the Industrial Dispute Act. He further submits that the labour Court has erred in awarding the back wages to the respondent who is seasonal labour and engaged on the basis of availability of the work.

4. The respondent had filed his return and

submits that the respondent never left the job but her services were illegally terminated thrice. However, before the Conciliation Officer, the petitioner side conceded to reinstate the respondent. The notice as contained in Annexure P/11 has never been served on the respondent and they appear to be fabricated documents and the petitioners were harassing the respondent. The earlier petitioners paid the salary as fixed by the Collector but in order to harass the petitioner, started paying the salary fixed for Agriculture Farm Labour. The salary was not paid to the petitioner from April 2010 to November 2011 which was admitted by the petitioners before the labour Court. The findings given by the labour Court that the respondent has served for more than 240 days in a calendar year and her services were terminated without complying the provisions of Section 25-F of the Industrial Disputes Act. It is submitted that as per the provision of Section 25-F of the ID Act, any termination without complying with the provision amounts to illegal, retrenchment and, therefore, for this reason the labour Court has rightly passed the impugned award. The petitioner has failed to produce the relevant documents before the labour Court to demonstrate that answering respondent has not worked for 240 days in a calendar year although they are in exclusive possession of the petitioner. He further relied on a judgment passed by the Apex Court in the case of Gauri Shanker vs. State of Rajasthan, 2015 (12) SCC 754.

5. Heard learned counsel for the parties and perused the record as well as the award passed by the labour Court. From perusal of the order passed by the labour Court, it reveals that the respondent was working as a labour

in the petitioner's association. She was paid the salary as per the Collector's basis, however, thereafter the respondent has started paying her salary as per the Agricultural Farm Labour. Thereafter, her services were terminated vide order dated 01/02/2007, she therefore filed an application for conciliation before the Conciliation Officer. Before the Conciliation Officer, the petitioner has given an assurance for reinstating her, however, from April 2010 she has started working with the petitioners. Thereafter although she had working from April 2010 to November 2011, however, no salary has been paid to her. She again approached before the Conciliation Officer by filing an application. Petitioners have again given assurance for reinstating her. Thereafter, she appeared before the petitioners on 08/09/2011, however, her services were again terminated on 01/01/2012. Before terminating her services, no departmental enquiry was initiated against her and she has not paid the compensation also. Before terminating the services, the petitioner has not followed the provision of Sections 25-F, 25-G & 25-H, of the ID Act and, therefore, she filed this application challenging the order of termination dated 01/02/2012. Respondent has filed reply and denied that the respondent has completed 240 days in a calendar year. It is submitted that the respondent has committed misconduct and has not given her attendance in time and as well as her appointment is on the basis of availability of the work and, therefore, her services have been terminated. It is submitted that the respondent is a seasonal labour and is employed by the petitioners on availability of the work and, therefore, before termination of her services, no enquiry is required to be initiated and the

compliance of Section 25-F, 25-G & 25-H of the ID Act is not required to be done.

6. The labour Court framed the issues and after recording the evidence has passed the impugned award. The labour Court while deciding the issue No.2 has held that the respondent was working with the petitioner's association since 1987. The Departmental witness DR. J. P. Khare has admitted in his statement that the respondent was working with them from 1987 from time to time. He also admitted that they have not produced any attendance register or muster rolls. The attendance register of the respondent as well as the documents relating to the payment of salary to the respondent are with the petitioners and as the petitioners have failed to produce those documents before the Labour Court, therefore, the labour Court has given the findings that respondent has proved that she is employed with the petitioner's organisation since 1987. The Apex Court in the case of Gauri Shankar (supra) in para 20 has held as under :-

"20. It is not in dispute that the workman was employed with the respondent Department in the year 1987 and on the basis of material evidence adduced by both the parties and in the absence of the non-production of muster rolls on the ground that they are not available, which contention of the respondent Department is rightly not accepted by the Labour Court and it has recorded the finding of fact holding that the workman has worked from 1.1.1987 to 1.4.1992. The Labour Court

has drawn adverse inference with regard to non-production of muster rolls maintained by them, in this regard, it would be useful to refer to the judgment of this Court in Gopal Krishnaji Ketkar v. Mohd. Haji Latif wherein it was held thus: (AIR p.1416, para5)

"5..... Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue.

It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai V. Manichavasaka Pandara, Lord Shaw observed as follows: (IA p. 103)

"" practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to, the courts the best material for its decision. With regard to third parties, this may be right enough- they have no responsibility for the conduct of the suit but with regard to the parties to the suit it is, in Their Lordships opinion an inversion of

sound practice for those desiring to rely upon a certain state of facts to withhold from the court the written evidence in their possession which would throw light upon the proposition."

This passage was cited with approval by this Court in a recent decision *Biltu Ram v. Jainandan Prasad*. In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in *Bilas Kunwar v. Desraj Ranjit Singh* . (IA p. 206)

..... But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents.""

7. The similar view was taken in the case of *Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda*, 2010 AIR SCW 542. In the said judgment in para 15 has held as under :-

"15) Applying the principles laid down in the above case by this court, the evidence produced by the appellants has not been consistent. The appellants claim that the respondent did not work for 240 days. The

respondent was a workman hired on a daily wage basis. So it is obvious, as this court pointed out in the above case 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 our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. It is the contention of the appellant that the services of the respondent were terminated in 1988. The witness produced by the appellant stated that the respondent stopped coming to work from February, 1988. The documentary evidence produced by the appellant is contradictory to this fact as it shows that the respondent was working during February, 1989 also. It has also been observed by the High Court that the muster roll for 1986-87 was not completely produced. The appellants have inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, inspite of the direction issued by the labour court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, it would be pertinent to mention the observation of three judge bench of this court in the case of Municipal Corporation,

Faridabad Vs. Siri Niwas [(2004) 8 SCC 195],

where it is observed:

"A Court of Law even in a case where provisions of the 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 this contentions. The matter, however, would be different where despite direction by a court the evidence is withheld."

8. As per the said judgment, due to non-production of muster rolls by the employer, the adverse inference can be drawn against the employer. In the present case also as the petitioner has failed to produced the muster rolls and the attendance register before the labour Court which was admittedly in their possession, therefore, the labour Court has rightly drawn inference against the petitioners, thereby holding that the respondent has worked for more than 240 days in the petitioners' association. The petitioners have also failed to prove that the respondent was indisciplined while she was on duty. The labour Court has also held that as the respondent has completed more than 240 days in one calendar year before her termination is amounts to retrenchment under Section 2(oo) of the ID Act and, therefore, before retrenchment the respondents are bound to comply with the provisions under Section 25(f) of the Act. In the present case, the petitioner has not issued prior one month's notice, neither paid the salary of one month in lieu of the notice nor paid any retrenchment compensation therefore, termination of services of the respondent amount to be illegal retrenchment.

9. Thus, the findings recorded by the labour

Court are based on proper appreciation of the evidence as well as facts available on record. The Apex Court in the case

of Gauri Shankar (supra) in para 23 & 24 has held as under:-

"23. The learned single Judge of the High Court has exceeded his jurisdiction under Articles 226 and 227 of the Constitution of India as per the legal principles laid down by this Court in the case of Harjinder Singh (supra) wherein this Court has held thus : (SCC page 205, para 21)

21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislation and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that

10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.

The said principle has been reiterated by this Court in *Jasmer Singh v. State of Haryana & Anr . .*

24. Therefore, in view of the above said case, the learned single Judge in exercise of its powers under Articles 226 and 227 of the Constitution of India erroneously interfered with the award of reinstatement and future salary from the date of award till date of reinstatement as rightly passed by the Labour Court recording valid and cogent reasons in answer to the points of dispute holding that the workman has worked from 1.1.1987 to 1.4.1992 and that non-compliance of the mandatory requirements under Sections 25-F, 25-G and 25-H of the Act by the respondent-Department rendered its action of termination of the services of the workman as void ab initio in law and instead the High Court erroneously awarded a compensation of Rs.1,50,000/- in lieu of reinstatement. The learned single Judge and the Division Bench under their supervisory jurisdiction should not have modified the award by awarding compensation in lieu of reinstatement which is contrary to the well settled principles of law laid down in catena of cases by this Court.

10. Thus, as per the said judgment, the High Court should not interfere into the findings recorded by the labour Court. Thus, in light of the aforesaid, I do not find that the labour Court has committed any jurisdictional error in passing the impugned award. Accordingly, the writ petition is dismissed.