

(2017) 04 BOM CK 0048
In the Bombay High Court
Case No : 4568 of 2009

The Sub Divisional Engineer, Public Works Department,
Chandur Railway, Sub Division, & Anr.

APPELLANT

Vs

Maroti Amrutrao Bramhankar

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Industrial Disputes Act, 1947, Section 25F, Section 2(k), Section 25G, Section 25H - Conditions precedent to retrenchment of workmen - Definitions - Pro

Citation : (2017) 04 BOM CK 0048

Hon'ble Judges : R. K. Deshpande

Bench : SINGLE BENCH

Advocate : S.B.Bissa, N.R.Saboo

Final Decision : Allowed

Judgement

1. The Labour Court has answered Reference IDA No. 372 of 1996 in the affirmative, directing reinstatement of an employee with continuity in service, but without backwages on the proved violation of Section 25F of the Industrial Disputes Act. The contention raised by the employee that there was violation of Sections 25G and 25H of the I.D. Act, has been rejected. The employer is before this Court in this writ petition.

2. Undisputedly, the termination took place with effect from 01.03.1987. A reference of dispute was sought in the year 1996 i.e. almost after a period of 9 years. The employee claimed that he continuously worked for more than 240 days during the period from 1980 to 01.03.1987.

3. The employee entered the witness box and the employer has also examined the witnesses. The employee did not produce any document on record to show that he completed 240 days continuous service preceding the date of his retrenchment on 01.03.1987, except his own self serving statement. Irrespective

of this, the labour Court recorded the finding in its judgment as under;

"Therefore, it is clear that if the documents are in existence and possession they should be produced. It has come in the evidence of Party No.1 in the form of admission that he has personally verified the Nominal Muster Rolls from 1980 to 1987 and are available at Division Office, Amravati, but the said documents not produced. Thus, it is clear from the said admission that existence of documents is proved, possession is also proved, but said documents not produced in spite of order of this Court. It is pertinent to note here that when they have produced documents for the year 1984-85 then why not for the year 1985 to 1987 which is best piece of evidence in possession of party No.1. It is true that burden of proving factum of 240 days lies on the workman and to prove his case. But it is not stated anywhere how it has to be proved. He stated on oath that he has worked continuously from 1980 to 01.03.1987 which clearly shows that he has completed 240 days prior to one year before his alleged termination dated 1.3.1987. Party No.1 is guilty of not producing record though available with them which can falsify the claim of Party No.2. There is no explanation come from party No.1 for not production of available record. If there is any justification or reason for no production of record then there is no need to draw adverse inference, but in the case in hand, the situation is different. The existence and possession of document proved nor they filed specific affidavit to that effect, therefore, inference can be drawn that said Nominal Muster Rolls produced before this Court from 1.3.1986 to 1.3.1987 would definitely go against them or prove claim of Party No.2"

The Labour Court proceeded to record the aforesaid findings after holding that the Court had directed the employer to produce the document of muster roll or to file an affidavit of existence and possession of the documents.

4. The dispute before the Labour Court was whether the employee has established that he has completed 240 days continuous service preceding the date of retrenchment on 01.03.1987. Merely because the employer has failed to produce the muster roll, it does not follow that the employee can be treated to have completed 240 days continuous service, particularly when the reference was sought after inordinate delay of 9 years. In case of delay in seeking reference, the real question which arises for consideration is whether the dispute referred to exists or not. In the recent decision of the Apex Court in the case of Prabhakar vrs. Joint Director, Sericulture Department and another, reported in 2016 (1) All MR 486 (SC), it is held in paragraph No.25 after considering the earlier decision of the Apex Court in Raghubir Singh vrs. General Manager, Haryana Roadways, Hissar, reported in (2014) 10 SCC 301, relied upon by Shri Saboo, that even the labour Court/ Industrial Court can also hold that there is no industrial dispute within the meaning of Section 2(k) of the said Act and therefore, no relief can be granted. In paragraphs 35 and 36, the Court has observed as under;

"35. Let us examine the matter from another aspect, viz. Laches and delays and

acquiescence.

36. It is now a well recognized principle of jurisprudence that a right not exercised for a long time is nonexistent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and nonsuited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities" "

5. The delayed reference has bearing on the question of existence of dispute. In the present case, there is absolutely no material placed on record to show that the dispute existed as on the date of making reference after lapse of 9 years from the date of termination of service. The Labour Court has, therefore, committed an error in holding that the delay in making reference would at the most be a cause for denial of backwages and not for setting aside termination and granting continuity and reinstatement in service. The award passed by the Labour Court cannot, therefore, be sustained and it will have to be quashed and set aside.

6. In the result, the writ petition is allowed. The award dated 26.09.2008 passed by the Labour Court in Reference IDA No. 372 of 1996 is hereby quashed and set aside. The Reference IDA No. 372 of 1996 is rejected. No order as to cost.