IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

MISC. PETITION No. 865 of 2018

PANKAJ KUMAR MISHRA

Versus

KRISHI UPAJ MANDI SAMITI THR.

Appearance:

Ms. Chitra Bais - Advocate for the petitioner.

Shri S.P. Jain - Advocate for the respondent.

Reserved on : 11.12.2024

Pronounced on : 02/05/2025

ORDER

The present petitioner has preferred this petition under Article 226 of the Constitution of India seeking the following reliefs:

> (i) That, impugned award dated 12.4.2017 (as pronounced on 24.7.2017) passed by the learned Presiding Officer, Labour Court No.1, Bhopal (Annexure P/1) may kindly be modified awarding full back wages to the petitioner and the same be paid alongwith interest @ 15% per annum, in the interest of justice.
> (ii) That, any other relief which is suitable in the facts and circumstances of the case in favour of the petitioner including the costs throughout may also be granted.

(2) At the outset learned counsel for the petitioners had placed an order dated 17.12.2024 passed in Misc. Petition No.6329 of 2022 (Goverdhan Vs. Chief Municipal Officer) and had submitted that the matter is covered by the judgement passed by Co-ordinate Bench of this Court and seeks parity viz a viz the said order.

(3) Learned counsel for the respondents has opposed the prayer, but could not disputed the facts.

(4) The order dated 17.12.2024 passed in Misc. Petition No.6329 of 2022 reads as under: -

> Since pleadings are complete and learned counsel for the parties are ready to argue the matter finally, therefore, at their joint request, it is heard finally.
> 2. By the instant petition filed under Article 227 of the Constitution of India, the petitioner is assailing the validity of award dated 06.08.2022 (Annexure-P/1) passed by Labour Court No.2, Bhopal, whereby the Court has decided a reference made to it under Section 10(1) of the Industrial Disputes Act, 1947 (in short the 'Act, 1947').
> 3. As per the facts of the case, the petitioner after entering into services had worked for the respondent w.e.f. 01.10.2011 on the post of skilled labour and thereafter, on 01.2.2019, orally his services were terminated. It is claimed by the petitioner that before terminating his services neither any opportunity of hearing nor any retrenchment compensation was paid to him and as such, his oral termination is in violation of provision of Section 25(f) of the Act, 1947. However, the petitioner raised an industrial dispute which was referred to the Labour Court to decide it in the following manner:-
> 'As to whether the termination of applicant namely Goverdhan s/o Kishan from service was valid and reasonable, if not then what relief is appropriate to be granted by issuing to the respondent ?'
> However, before the Labour Court, the claim raised by the petitioner was based upon the fact that he was appointed with the respondent/department w.e.f. 01.10.2011 as a daily wager (skilled labour) and on 01.02.2019, his services were terminated orally even without there being any order in writing that too without giving any opportunity of hearing or any retrenchment compensation. As per the petitioner, before terminating his services, no approval whatsoever from the State was ever taken by the respondent. According to him, after his termination, he was unemployed and as such, his termination be declared illegal as required provision i.e. Section 25(f) of the Act, 1947 was not followed.
> (3.1) The respondent denied the claim of the petitioner saying that he was never appointed with the respondent/department. However, as per the respondent, as and when they needed the petitioner's services, they took the same and accordingly, he was paid the wages. According to the respondent, since the services of the petitioner were not required in the department, therefore, he was not asked to perform his duties.
> (3.2) The Labour Court framed as many as five issues, recorded

the statement of the parties and took note of the material placed during the course of trial.

(3.3) As per the Labour Court, though the claimant/petitioner said that he was engaged by the respondent, but in support whereof, he did not produce any documentary evidence. According to the Labour Court, since initial burden of proof was upon the claimant/petitioner to prove his case showing that after rendering continuous service for 240 days in a calendar year with the respondent/department, the same got terminated by them that too without any order in writing, therefore, he ought to have filed some documents to give strength to his claim. According to the Labour Court, in absence of any material indicating appointment made in favour of the petitioner and also that he rendered services continuously for 240 days in a calendar year, it would be difficult to ascertain as to whether the claimant was actually engaged by the respondent/department or not and under such circumstances, no question of violation of any provision of Section 25(f) of the Act, 1947 arises. Ultimately, the reference made before the Labour Court got decided against the petitioner.

4. Learned counsel for the petitioner has submitted while shifting burden upon the petitioner to prove his case, the Labour Court has committed mistake for the reason that initially the burden lies upon the respondent/department to establish that neither the petitioner was engaged by them nor he worked continuously for 240 days in a calendar year.

5. Considering the argument advanced by learned counsel for the petitioner, on perusal of impugned award so also the record of Labour Court, I am of the opinion that the trial Court has committed illegality while shifting burden upon the claimant/petitioner to prove that he continuously worked in a calendar year for 240 days. As per settled legal position, though initial burden lies upon the claimant/workman to prove his claim, but the movement the claimant/workman deposed about completion of 240 days of his/her service in the preceding year, then it is the duty of employer to rebut the oral evidence of the claimant/workman by producing cogent documentary evidence and if it is not done by the employer then adverse inference can be drawn against them. Dealing with the same situation, the Supreme Court in a case reported in AIR 2010 SC 1236 [Director, Fisheries Terminal Department Vs. Bhikubhai Meghajibhai Chavda] has observed as under:-

'4. The Labour Court on consideration of the oral and documentary evidence has concluded that the appellant is an industry since there is no evidence to show that the appropriate Government had declared the appellant as a seasonal industry or the work is performed intermittently. It has also observed that the appellant has not produced any documentary evidence to show that the workman had not completed 240 days in the preceding year and was not in service till 1991 and, therefore, an adverse inference requires to be drawn that the workman has completed continuous service of 240 days and, accordingly, has concluded

that the appellant employer could not have retrenched the services of the workman without complying with the provisions of the Industrial Disputes Act. In view of the aforesaid finding and the conclusion reached, the Labour Court had directed the appellant to reinstate the respondent with 20% back wages for the period when the respondent was kept out of service. The award passed by the Labour Court was challenged by the appellant before the High Court.

5. The High Court has endorsed the award passed by the Labour Court on the ground that the Labour Court has rightly come to the conclusion that the appellant has not established by leading cogent evidence that the appellant is not a seasonal industry. It is also observed that, once it has come in evidence that the workman has completed 240 days of service in the preceding year, then the initial burden is shifted on the employer to rebut the oral evidence of the workman by producing relevant oral and documentary evidence and since the appellant failed to produce the same before the Labour Court, it was justified in concluding that the workman had completed continuous service of 240 days during the preceding year and accordingly had dismissed the writ petition filed by the appellant. Being aggrieved by the judgment and order passed by the High Court, the appellant is before us in this appeal.

6. The learned counsel for the appellant submitted that the appellant industry is seasonal in nature and, the respondent was employed on a purely temporary basis and, therefore, the onus lies on the respondent workman to prove that he had in fact worked for 240 days in the preceding year. It is further submitted that the claim of the workman was time-barred and, therefore, the Labour Court ought not to have entertained the claim made by the workman, since the workman had approached the Labour Court nearly after eight years from the date he was supposed to have been terminated from service by the employer.

* * *

14. Section 25-B of the Act defines "continuous service". In terms of sub-section (2) of Section 25-B if a 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 240 days within a period of one year, he will be deemed to be in continuous service.

15. The respondent claims that he was employed in the year 1985 as a watchman and his services were retrenched in the year 1991 and during the period between 1985 to 1991, he had worked for a period of more than 240 days. The burden of proof is on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. The law on this issue appears to be now well settled. Likewise, in a case reported in (2005) 5 SCC 100 [Manager, Reserve Bank of India, Bangalore Vs. S. Mani and others], the Supreme Court has observed as under:-

'Burden of proof

28. The initial burden of proof was on the workmen to show that

they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service stating:

"It is admitted case of the parties that all the first parties under the references CRs Nos. 1 to 11 of 1992 have been appointed by the second party as ticca mazdoors. As per the first parties, they had worked continuously from April 1980 to December 1982. But the second party had denied the abovesaid claim of continuous service of the first parties on the ground that the first parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and their services were required whenever necessity arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the first party, since the second party had denied the abovesaid claim of continuous period of service, it is for the second party to prove through the records available with them as the relevant records could be available only with the second party."

29. The Tribunal, therefore, accepted that the appellant had denied the respondents' claim as regards their continuous service.

30. In Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25 :2002 SCC (L&S) 367] it was stated : (SCC p. 26, para 3)

"3. ... In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

(See also Essen Deinki v. Rajiv Kumar [(2002) 8 SCC 400 : 2003 SCC (L&S) 13] .)'

6. In the present case, the petitioner before the Labour Court had very categorically stated that he worked with the respondent from 01.10.2011 and got terminated without any reason orally on 01.02.2019. He had also stated that during the said period, he was continued in the employment with the respondent/organization and even during his cross-examination, he had reiterated the said fact. The Chief Executive Officer of the respondent/organization was also examined, who had supported the stand of workman saying that he worked w.e.f. 01.10.2011 to 01.02.2019. The authority had further stated that even the institute did not produce any record because the same was never called. He had also shown unawareness about the petitioner's continuous working in a

preceding year for 240 days. It was also stated by the authority that the said fact can be ascertained only after examining the record. It was further stated by the authority that he is not in a position to apprise the Court whether the records from the year 2011 till 2019 i.e. attendance register and salary register are available in the office or not.

7. In view of the aforesaid facts and circumstances of the case and the settled legal preposition, it is proper to hold that initial burden which was upon the workman to prove that he worked continuously for 240 days had been discharged by him and there was material available on record to show the same, but when the burden shifted upon the employer to rebut the stand of the workman, then they failed to do so and, therefore, under such circumstances, an adverse inference is drawn against them. Under the existing scenario, I have no hesitation to say that the order of petitioner's termination was passed in violation of provision of Section 25(f) of Act, 1947. Furthermore, I have no iota of doubt to say that the award passed by the Labour Court on 06.08.2022 (Annexure-P/1) is not sustainable in the eyes of law because it was based upon the incorrect analogy and settled legal position and, therefore, it is hereby set aside. Thus, the respondent is directed to reinstate the petitioner in service with 50% back-wages and also to pay consequential benefits to him accordingly.

8. With the aforesaid, the petition stands allowed. No costs.

(5) In view of the aforesaid, since same is the situation in the present petition it stands allowed and disposed of in the manner as directed by the Coordinate Bench of this Court in case of Goverdhan (supra) which shall apply mutatis mutandis in the present case.

(MILIND RAMESH PHADKE)
JUDGE

(aspr)