

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.1593 of 2010 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Pankaj Miglani, Advocate, for the petitioner. Mr. I.D. Paliwal, Addl. CSC, for the State of U.P/respondent. As against the act of the employer, the petitioner/workman had sought a reference under section 4K of the U.P. Industrial Disputes Act, the same was referred to be decided by the Government Order No.316-20/51/R 2001, dated 09.01.2002, whereby the Adjudication Case No.30 of 2002, was registered, formulating the following question of reference to be decided:- "क्या सेवायोजकों द्वारा अपने श्रमिक श्री यशपाल सिंह पुत्र नकलीराम "बेलदार की सेवायें दिनांक 30.07.91 से समाप्त किया जाना उचित तथा / अथवा वैधानिक है, यदि नहीं तो संबंधित श्रमिक किस हितलाभ / क्षतिपूर्ति पाने का अधिकारी हैं तथा अन्य किस विवरण सहित।" The said reference, which was directed to be decided by the Labour Court, was with regards to the consideration of the act of discontinuance of the service of the petitioner/workman with effect from 30.07.1991. The said reference made to the Labour Court has been answered against the petitioner. Hence the writ petition. Learned counsel for the petitioner has submitted that the reason assigned by the Labour Court while answering the reference against the present petitioner is on the ground that since the petitioner has not completed 240 days in a calendar year, preceding year of removal of his from services, the 6N of the U.P. Industrial Disputes Act, has not been made applicable on the petitioner. The petitioner argues to the contrary

			based upon the pleadings raised by him in paragraph 6, wherein, he has contended that during the proceedings before the Labour Court, he had filed two applications i.e. being applications dated 25.07.2002 and 20.07.2002, wherein, he has sought a direction, that the employer may be directed to summon the muster role of the division number 6; for the periods referred to therein, in order to enable the workman to establish the fact that he has continued to work for a period of 240 days prior to the date of his discontinuance from the job. Learned counsel for the petitioner submits that the impugned award would be vitiated for the reason being that in accordance with the pleadings raised in paragraph 8, the impugned award has been rendered without taking any decision, as such, on the application thus submitted by the petitioner for summoning the muster role in order to enable the workman to establish that he has worked for over 240 days. He further submits, that the pleadings, thus, raised by him in the writ petition with regards to the filing of the application as referred to in paragraph 6, has not been answered by the respondent, in a negative in their counter affidavit as to whether no such application has been filed by the petitioner. Thus, the presumption would be that the pleadings raised by the petitioner in paragraph 6, remains unrebutted, and as such, for an effective adjudication of the reference case by the Labour Court, the Labour Court ought to have summoned the records of the muster role in order to enable the workman to establish, that he has worked for more than 240 days', and it was not possible, then the Court should have recorded its findings on the application thus preferred by the workman. Having not done so, it would vitiate the impugned award of 31.07.2007, because it would amount to that the Court has proceeded to decide the matter without even considering
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			the entire material which was placed before it by the petitioner to substantiate that he has worked for over 240 days in a preceding calendar year. What is more important is that in the counter affidavits filed by the respondents so far as the reply pertaining to the paragraph 6 of the writ petition with regards to filing of the application to summon the muster role records, as well as the pleadings raised by the petitioner that though these applications remain undecided, had not been specifically replied by the respondents in the counter affidavit denying the factum of the petitioner's request to summon the records nor do they denied that the Labour Court has considered those applications and its impact over the entire controversy, prior to deciding the matter on the pretext that the applicant has not worked for a period of more than 240 days. Hence, section 6N of the U.P. Industrial Disputes Act, would not be applicable. In fact these two aspects itself (1) that filing of an application is an undisputed fact (2) that the impugned award doesn't speaks, that the Labour Court has passed any orders on the same either at the stage prior to deciding the matter on 31.07.2007, or even thereafter or even at the stage when the award itself was decided by the labour Court in the Adjudication Case No.30 of 2002. That would rendered the award to be without an application of mind, and without even considering the material, which was sought to be placed on record by the workman in order to prove his case that he has worked for more than 240 days in the preceding 12 months prior to his dispensation of services. On this limited count itself, since the judgment rendered by the Labour Court is without an application of mind, and without even passing any order on the application preferred by the applicant, that will not amount to be an adjudication, but rather a cursory answering the reference without even dealing with the entire material, which was placed
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			before it or which was sought to be placed by the parties, before the Labour Court. In that view of the matter, the impugned award dated 31.07.2007, would be vitiated. The same is accordingly hereby quashed. The matter is remitted back to the Labour Court to re-decide the Adjudication Case No.30 of 2002, afresh after considering the impact of the applications referred to by the petitioner as referred in paragraph 7, and then to answer the reference in accordance with law. Since the matter is an old case pending consideration since 2002, it is hope and trusted that the Labour Court would decide the matter as expeditiously as possible, but not later than nine months from the date of the production of a certified copy of this judgment. Subject to the above, the writ petition stand allowed. (Sharad Kumar Sharma, J.) 14.08.2023 NR
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