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2026:CGHC:35511

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPL No. 9 of 2020**

Parasram Sahu S/o Late Tijuram Sahu Aged About 46 Years R/o Village And Post Amora, Tahsil And Police Station Nawagarh, District - Janjgir - Champa Chhattisgarh.

... Petitioner**versus**

1 - State Of Chhattisgarh Through Secretary Water Resources Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District : Raipur, Chhattisgarh.

2 - Executive Engineer, Hasdeo Nahar Jal Prabandh Sambhag, Janjgir, District - Janjgir - Champa Chhattisgarh.

3 - Presiding Officer, Labour Court Janjgir - Champa District - Janjgir Champa Chhattisgarh.

... Respondent(s)

For Petitioner : Mr. Satish Gupta, Advocate

For Respondent(s) : Mr. Ajay Kumrani, Panel Lawyer

Hon'ble Shri Justice Rakesh Mohan Pandey**Order on Board****12/08/2026**

1. The petitioner has filed this petition seeking the following relief(s):-

"10.1. This Hon'ble court may be pleased to call for the entire records from the respondent authority as well as call for the record of the Case No. 17/ID Act/Ref./2013.

10.2 This Hon'ble Court may kindly be pleased to set aside the award dated 14.09.2018 passed by the learned Presiding Officer Under the Industrial Dispute Act cum

Labour Court, Janjgir-Champa in case No. 17/IDAct/2013 (reference) and pronounced on 14.11.2018.

10.3 This Hon'ble Court be pleased to further hold that the action on the part of respondent in respect of termination/retrenchment of the petitioner is illegal and contrary to the provision of Industrial Dispute Act, 1947.

10.4 This Hon'ble Court be pleased to direct the respondent authority to reinstate the petitioner in service with all consequential benefit including back wages and continuity of service.

10.5 Any other relief as deemed fit by this Hon'ble Court."

2. Facts in brief are that the petitioner was initially appointed to the post of Labour on daily wages in the year 1984 and worked continuously till 01.01.1996. His services were terminated orally by Respondent No. 2 on 01.01.1996, without compliance with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947'). After termination, the petitioner raised an industrial dispute before the Conciliation Officer, Janjgir-Champa, seeking reinstatement. The dispute could not be settled, and accordingly the State Government made a reference before the Labour Court on the following term of reference:

"As to whether the termination of Parasram Sahu S/o Tijuram Sahu is legal and proper? If not, then the petitioner is entitled to which relief and what direction should be issued to the respondent in this regard."

The learned Labour Court, vide award dated 28.10.2013 in Case No. 17/I.D. Act/2013, directed the respondent authority to reinstate the

petitioner within 30 days without back wages, treating the period of termination as continuity of service. In compliance thereof, the petitioner was reinstated on 27.11.2013 as a daily-wage earner to the post of Helper. The State Government challenged the award dated 28.10.2013 before this Court in WPL No. 156/2014. Vide order dated 06.04.2018, this Court observed that the Labour Court had not recorded a specific finding that the petitioner had in fact completed 240 days of continuous service in one calendar year preceding the date of termination, as required under Section 25-F of the Act of 1947. Accordingly, the matter was remitted back to the Labour Court to consider the matter afresh and record such a specific finding within 45 days. It was further directed that if the petitioner has already been reinstated pursuant to the earlier award, he would be allowed to continue in service until the matter is decided afresh by the Labour Court, thereafter, the learned Labour Court passed the impugned award dated 14.09.2018, holding that the petitioner failed to prove continuous service of 240 days in the calendar year preceding the date of his termination, and consequently dismissed the statement of claim.

3. Learned counsel appearing for the petitioner/workman would argue that the petitioner adduced sufficient evidence to establish the fact that he had worked for 240 days in a calendar year preceding the date of termination of his services. It is also contended that the learned Labour Court failed to appreciate the said piece of evidence. He would further

contend that the workmen who were engaged in the department after the engagement of the petitioner are still working, whereas, the service of the petitioner were terminated, and thus the department failed to comply with the provisions of Section 25-G of the Act of 1947. It is also argued that the petitioner moved an application before the learned Labour Court seeking a direction to the respondent/employer to provide material documents regarding engagement of the petitioner but no order was passed on that application. He would submit that as the application was moved by the petitioner, this Court may draw an adverse inference against the employer. Mr. Gandhi, Advocate, has placed reliance on the judgment rendered by the Hon'ble Division Bench in Writ Appeal No. 278 of 2021, parties being Smt. Kunti Bai Kashyap and the State of Chhattisgarh and others, decided on 01.02.2023, wherein it is held that where a daily-wage employee fails to produce evidence to show that he continuously worked for five years under the employer, such employee would be entitled to monetary compensation. He would pray that a direction may be issued to the respondent employer to make payment of compensation in lieu of reinstatement of service, as the petitioner has already attained the age of superannuation.

4. On the other hand, learned Panel Lawyer appearing for the State would oppose the submissions made by counsel for the petitioner. He would submit that the petitioner could not lead clinching evidence to

establish the fact that he worked for 240 days in a calendar year preceding the date of termination of his services. It is further argued that sufficient documents were not produced before the Court below in this regard. He would submit that the employer examined the Sub-Divisional Officer of the department, who categorically stated that the petitioner/workman did not work for the period pleaded in the statement of claim. This witness further stated that the workman never worked continuously for 240 days in a calendar year with the department and that his engagement was casual in nature.

5. With regard to compensation, learned State counsel would argue that the petitioner/workman was required to establish the fact that he worked for 240 days in a calendar year and that he was entitled to reinstatement; and in such a situation, a direction with regard to payment of monetary compensation can be considered. He has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***Krishna Bhagya Jal Nigam Ltd. v. Mohd. Rafi, reported in (2006) 9 SCC 697.***
6. I have heard the learned counsel appearing for the parties at length and perused the records.
7. Perusal of the statement of claim filed by the petitioner show that the petitioner/workman specifically pleaded that he worked for 240 days in a calendar year under the respondent department.

8. Perusal of the record would show that the petitioner could not adduce documentary evidence to establish this fact. The oral evidence adduced by the petitioner/workman would not suffice, and therefore the learned Labour Court recorded a specific finding that the petitioner failed to prove the fact of his engagement for more than 240 days in a calendar year preceding the date of termination of his service.
9. It is a well-settled principle of law that the burden of proof lies on the workman so as to entitle him to the benefits of Section 25-F of the Act of 1947. The Hon'ble Supreme Court in the matter of **Mohd. Rafi (supra)** held that where a workman fails to discharge the initial burden, an award of the Labour Court holding the termination of services as illegal on the ground of non-compliance with Section 25-F of the Act of 1947 and directing his reinstatement would be erroneous. Relevant paragraphs 6 to 10 are reproduced herein below :

"6. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows:

"6.It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the

conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in *Range Forest Officer v. S.T. Hadimani* (2002 (3) SCC 25). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

7. In ***Municipal Corporation, Faridabad v. Siri Niwas* (2004 (8) SCC 195)**, it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In *M.P. Electricity Board v. Hariram* (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows:

"11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of *Municipal Corporation, Faridabad v. Siri Niwas* JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard:

"15. 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 his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always

optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."

8. In **Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. (2005(5) SCC 100)** a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In **Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (8) Supreme 481)** it was held as follows:

"13. So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in *Range Forest Officer v. S.T. Hadimani* the onus is on the workman."

The position was examined in detail in *Surendranagar District Panchayat v. Dehyabhai Amarsingh (2005 (7) Supreme 307)* and the view expressed in *Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (supra)* was reiterated.

9. In **R.M. Yellatti v. The Asst. Executive Engineer (JT 2005 (9) SC 340)**, the decisions referred to above were noted and it was held as follows:

"17. Analyzing the above decisions of this court, it is clear that the provisions of the

Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

10.The above position was again re-iterated in **ONGC Ltd. and Anr. v. Shyamal Chandra Bhowmik (2006 (1) SCC 337)** and **Chief Engineer, Ranjit Sagar Dam and Anr. v. Sham Lal (2006 AIR SCW 3574).**"

10. After going through the pleadings made by the petitioner in the statement of claim, the evidence adduced by him and the law laid down by the Hon'ble Supreme Court in the matter of **Mohd. Rafi (supra)**, in my opinion, the learned Labour Court rightly held that the petitioner/workman failed to establish the fact that he worked for more than 240 days in a calendar year preceding the date of termination of his services.
11. With regard to the application of Section 25-G of the Act of 1947, it is necessary on the part of the workman to plead and prove that he belongs to a particular category of workmen in that establishment. In the absence of any agreement, the employer shall ordinarily retrench the workman who was the last person to be employed in that category.
12. In the present case, the workman failed to plead and prove the fact that the workman who was employed after the petitioner is still working with the establishment. In absence of such evidence, in opinion of this Court, provisions of Section 25-G of the Act of 1947 would not attract and the learned Labour Court rightly denied relief under said provision.
13. One more submission was made by the learned counsel appearing for the petitioner that an adverse inference should be drawn against the

establishment/employer because documents were not provided before the learned Labour Court despite applications having been filed.

14. It is a well-settled principle of law that the workmen must establish the primary foundation of their case, and if the establishment or employer thereafter fails to rebut that foundation and further fails to produce necessary documents, an adverse inference may be drawn against the establishment or employer.
15. The Hon'ble Supreme Court, in the matter of ***State of Uttarakhand and Others v. Sureshwati***, reported in **(2021) 3 SCC 108**, held that the burden to prove that the workman had worked for 240 days lies on the workman himself. The question whether an adverse inference could be drawn against the employer, in case he did not produce the best evidence available with it, arises thereafter. If some of the documents have not been produced by the establishment, an adverse inference could not be drawn. Relevant para 26 is reproduced herein below :

"26. A Division Bench of this Court in **Bhavnagar Municipal Corpn. v. Jadeja Govubha Chhanubha**, **2014(16) SCC 130** held that :

"7. It is fairly well-settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947. For the respondent to succeed in that attempt he was required to show that he was in service for 240 days in terms of Section 25-B(2)(a) (ii). The burden to prove that he was in actual and

continuous service of the employer for the said period lay squarely on the workman. The decisions of this Court in Range Forest Officer v. S.T. Hadimani,(2002) 3 SCC 25, Municipal Corpn., Faridabad v. Siri Niwas, 2004(8) 195,, M.P. Electricity Board v. Hariram, (2004) 8 SCC 246. Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan,(2004) 8 SCC000000000000 161, Surendranagar District Panchayat v. Jethabhai Pitamberbhai, 2005(8) SCC 450 and R.M. Yellatti v. Executive Engineer, 2006(1) SCC 106 unequivocally recognise the principle that the burden to prove that the workman had worked for 240 days is entirely upon him. So also the question whether an adverse inference could be drawn against the employer in case he did not produce the best evidence available with it, has been the subject-matter of pronouncements of this Court in Municipal Corpn., Faridabad v. Siri Niwas and M.P. Electricity Board v. Hariram [M.P. Electricity Board v. Hariram, , reiterated in RBI v. S. Mani¹⁸. This Court has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it.”

16. With regard to the monetary compensation claimed by the petitioner, as he failed to prove the fact that he had worked continuously for 240 days in a calendar year preceding the date of termination of his services, and further failed to establish that the employees engaged after the appointment of the petitioner are still working with the establishment, no such relief can be granted.
17. In the matter of **Smt. Kunti Bai Kashyap (supra)**, she was offered engagement as a daily-wage earner on a compassionate basis and had worked for 6½ years. Accordingly, the Hon’ble Division Bench in that matter granted monetary compensation. However, the facts of the present case are entirely different. In the opinion of this Court,

therefore, the petitioner is not entitled to any relief in the form of monetary compensation. Accordingly, this petition fails and is hereby **dismissed**.

Sd/-

Rakesh Mohan Pandey

JUDGE

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