



2026:AHC:204787

Reserved on 21.09.2026
Delivered on 30.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 30128 of 2015

Sam Higginbottom Institute of Agriculture
Technology and Sciences

.....Petitioner(s)

Versus

The Labour Court Varanasi and 24 others

.....Respondent(s)

Along with :

Writ - C No. 54062 of 2015:

1. Sam Higginbottom Institute of Agriculture Technology and Sciences

Versus

The Labour Court Varanasi and 24 others

Writ – C No. 30129 of 2015:

2. Sam Higginbottom Institute of Agriculture Technology and Sciences

Versus

The Labour Court Varanasi and 24 others

Writ – C No. 54061 of 2015:

3. Sam Higginbottom Institute of Agriculture Technology and Sciences

Versus

The Labour Court Varanasi and 24 others

Counsel for Petitioner(s) : A.c.tiwari(ac), Amariteshwar Prasad Tripathi,
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Shekhar Kumar, Sunil Kumar Yadav

Court No. - 36**HON'BLE SAURABH SHYAM SHAMSHERY, J.**

1. Petitioner before this Court is Sam Higginbottom Institute of Agriculture Technology and Sciences and is aggrieved by awards impugned in above referred writ petitions whereby it was held that alleged retrenchment of 22 Workmen was contrary to law since allegedly they have worked for 240 days in a calendar year and accordingly provisions of U.P. Industrial Disputes Act, 1947 were not followed. The other issue that Workmen were in process of transfer to Contractor was not adjudicated since process was withdrawn. Relevant part of one of the award dated 07.01.2015 impugned in Writ-C No. 30128 of 2015, is reproduced hereinafter:

“11. मैंने दोनों पत्रावलियों का भलीभांति अवलोकन किया एवं तर्क के दौरान उठाये गये विन्दुओं पर गम्भीरता से विचार किया।

12. अभिनिर्णय विवाद सं. 01/2011 में श्रमिकों की मांग है कि उन्हें अवैधानिक तरीके से संबिदाकर के अधीन कर दिया गया है जिसे निरस्त किया जाय। इस संबंध में सेवायोजक ने अपने लिखित कथन एवं प्रत्युत्तर में यह स्पष्ट रूप से कहा है कि संबिदाकर के अधीन करने का निर्णय प्रबंधन ने अपने पत्र दि. 22.2.2010 जिसे उपक्रमायुक्त, इलाहाबाद के समक्ष पत्र दि. 24.2.2010 द्वारा प्रेरित किया है वापस ले लिया है। श्रमिकों के नोटिस दि. 25.01.2011 के उत्तर में प्रस्तुत उत्तर दि. 5.4.2011 के प्रस्तर. 2 में इस बात का उल्लेख करते हुये सेवायोजक ने उपश्रमायुक्त को भेजे गये उपरोक्त पत्र की सत्यारित प्रति दाखिल की है जिसमें कुल 52 श्रमिकों के बारे में यह निर्णय लिया गया है कि ये दैनिक वेतन भोगी कर्मचारी जिस प्रकार से विश्वविद्यालय प्रबंधन द्वारा वेतन पाते थे उसी प्रकार वेतन पाते रहेंगे और ये विश्वविद्यालय प्रबंधन के ही अधीन रहेंगे। इस पत्र के बाबत श्रमिक पक्ष की ओर से मात्र इतना ही कहा गया है कि चूंकि इन कर्मचारियों को सेवा समाप्ति कर दी गई अतः इसका लाभ उन्हें नहीं मिल पा रहा है। अपने मौखिक साक्ष्य में भी श्री रामजी भारतीय एवं श्री रोशन लाल साहू ने इस बाबत एक शब्द भी नहीं कहा है। उपरोक्त के आधार पर मैं इस मत का हूँ कि अभिनिर्णय विवाद सं. 01/2011 में परिशिष्ट में अंकित 26 श्रमिकों को

सेवायोजक ने संबिदाकार के अधीन करने का निर्णय वापस ले लिया है और वे विश्वविद्यालय के ही कर्मचारी माने जायेंगे।

13. अभिनिर्णय विवाद सं. 52/2011 में 22 श्रमिकों की दि. 5.10.2010 से सेवा समाप्ति का मामला संदर्भित है। इस संबंध में श्रमिक गण का कथन है कि वे कई वर्षों से सेवायोजक संस्थान में विभिन्न पदों पर कार्यरत है और जब इन लोगों ने नियमानुसार वेतन व अन्य सुविधाये दिये जाने की मांग की तो सेवायोजक ने इन्हें नाराजगी वश सेवा से पृथक कर दिया। इसके विपरीत सेवायोजक का कथन है कि ये श्रमिकगण स्वतः कार्य पर नहीं आ रहे हैं और मुकदमा लड़ने के आदी हैं। श्रमिक गए की ओर श्री रोशन लाल साहू एवं श्री रामजी भारतीय का मौखिक साक्ष्य लेखाबद्ध कराया गया है जिसमें उन्होंने कहा है कि ये लोग अपने नियोजन की तिथि से लेकर सेवा समाप्ति की तिथि तक लगातार कार्य किये हैं और प्रत्येक वर्ष 240 दिन से अधिक कार्य किये हैं। इन 22 श्रमिकों को सेवायोजकों ने नाराजगी वश दि. 5.10.2010 से सेवा से पृथक कर दिया। सेवा से पृथक करते समय इन्हें कोई नोटिस, नोटिस पे आदि नहीं दिया गया। श्रमिक गण की ओर से दिये गये इस साक्ष्य के विपरीत कोई साक्ष्य सेवायोजक की ओर से प्रस्तुत नहीं किया गया है। सेवायोजक का यह कथन कि उनका संस्थान एक शैक्षणिक संस्थान है और 'उद्योग' की परिधि में नहीं आता के बारे में भी कुछ नहीं कहा गया। इसके विपरीत श्रमिकगण की ओर से 2000(84) एफ एल आर 126 हाल एजूकेशन सोसाइटी, कोरवा व अन्य बनाम जीतेन्द्र कुमार श्रीवास्तव में मा० उच्च न्यायालय, इलाहाबाद द्वारा दिये गये विधिक व्यवस्था प्रस्तुत किया गया है जिसमें शैक्षणिक संस्थान को उद्योग माना गया है। सेवायोजक का यह स्थान कि ये श्रमिक गण स्वतः कार्य पर आना बंद कर दिये मान्य नहीं है। यदि ये लोग कार्य पर आना बंद कर दिये तो सेवायोजक द्वारा इन श्रमिकों को नोटिस भेजना अनिवार्य था। ऐसे किसी नोटिस को भेजे जाने की बात सेवायोजक अपने अभिकथनों में नहीं कहते हैं। इसके विपरीत श्रमिक गण की ओर से साक्ष्य द्वारा भी यह प्रमाणित किया गया है कि इनको अवैधानिक तरीके से कार्य से वंचित कर दिया गया और कार्य से पृथक किये जाने से पूर्व इन्हें कोई नोटिस या नोटिस पे या मुआवजा नहीं दिया गया। अतः वैधानिक प्राविधानों का अनुपालन किये बिना इन श्रमिकों की सेवा समाप्ति अनुचित व अवैधानिक ही कहो जायेगी। अतः परिशिष्ट में अंकित सभी 22 श्रमिक गण अपने पूर्व पद पर तारतम्यता के साथ सेवा में बहाल किये जाते हैं। जहां तक बैक वेजेज का संबंध है, ये सभी श्रमिक गण बैठकी अवधि का 2/3 पाने के अधिकारी होंगे। इसके साथ ही वाद व्यय के रूप में भी सेवायोजक रु. दो हजार मात्र श्रमिक गण को प्रदान करेंगे।"

2. Sri Diptiman Singh, learned counsel for petitioner, by referring various judgments passed by Supreme Court as well as this Court in

The Range Forest Officer vs. S.T. Hadimani, 2002(3) SCC 25; Rajasthan State Ganganagar S. Mills Ltd. vs. State of Rajasthan and another, 2004(8) SCC 161; Manager, R.B.I., Bangalore vs. S. Mani and others, 2005(5) SCC 100; Municipal Corporation, Faridabad vs. Siri Niwas, 2004(8) SCC 195; Mahboob Deepak vs. Nagar Panchayat Gajraula and another, 2008(1) SCC 575; Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh, 2013(5) SCC 136; Sr. Suptd. Telegraph (Traffic), Bhopal vs. Santosh Kumar Seal and others, 2010(125) FLR 736; M/s Devyani Beverages Ltd. vs. Labour Court-II, Ghaziabad, 2006(108) FLR 426; M/s Laxmi Palace (Cinema) Mahmoorganj Varanasi vs. Presiding Officer Labour Court Varanasi, 2005(105) FLR 325; and, Zila Panchayat Mathura vs. Deputy Labour Commissioner Agra Division and others, 2011(131) FLR 625 submitted that Workmen have not discharged burden of proof that they have worked 240 days in a calendar year and that even upon order of reinstatement a direction of 2/3 back wages cannot be passed. He also referred a judgment passed by this Bench in the case of **State of U.P. and two others vs. Presiding Officer, Labour Court and another, 2026:AHC:195564** and relevant part thereof is mentioned hereinafter:

“7. I have considered aforesaid submissions and perused the material on record.

8. In the present case, contesting-respondent has only made an oral statement that he has continuously worked from 1986 to 1992 as well as that for more than 240 days in a year. However, his oral submission was not supported by any documentary evidence. Petitioner has brought on record the muster roll between 1986 to 1989 wherein contesting-respondent was granted priority to work as Chowkidar as and when required. No further document was placed on record either by petitioner or contesting-respondent. Therefore, a finding returned by Labour Court that in terms of Section 2(g) of Industrial Disputes Act, the contesting-

respondent was in continuous service and that he has worked for more than 240 days in a calendar year, would not be justified.

9. Otherwise also, even if the order of reinstatement is upheld, the further direction of full back wages would be contrary to settled law position as held by Supreme Court in Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs Mohan Lal, (2013) 14 SCC 543 as well as State of Uttar Pradesh vs. Krishna Murari Sharma, 2025 INSC 1500 that an order of full back wages cannot be automatic with an order of reinstatement.

10. The Court also takes note that contesting-respondent has 2-3 years to work if he is reinstated though there is no material on record either before Labour Court or before this Court that during earlier period contesting-respondent was not gainfully employed.

11. In aforesaid circumstances, in the interest of justice, it would be justified if this writ petition is disposed of with one time lump sum compensation in view of a judgment passed by Supreme Court in State of Uttar Pradesh vs. Krishna Murari Sharma (supra). Therefore, considering that contesting-respondent has worked for about 6 years as per his own case and Rs. 1 lakh has already been deposited, one time lump sum compensation is determined to be Rs. 3 lacs. Contesting-respondent will be at liberty to file an application for release of Rs. 1 lakh already deposited and remaining amount of Rs. 2 las shall be paid by petitioners to contesting-respondent within four weeks from today.”

3. Learned counsel further submitted that Labour Court has not considered that no affidavit or statement was made that Workmen were not gainfully employed and even before this Court there is no such averment.

4. Per contra, Sri Harish Chandra Dwivedi, Advocate holding brief of Sri Sunil Kumar Yadav, learned counsel appearing for contesting-respondents, i.e., Workmen, has supported impugned awards that Workmen have engaged to do different works, they worked regularly and more than 240 days and on one day they have been told that they are disengaged. No prior notice was issued. Provisions of Section 6-N of Act, 1947 was not complied with.

5. I have considered aforesaid submissions and material on record.

6. The age of all Workmen is not on record but one of the Workman has declared his age as 45 years when this writ petition was filed in the year 2015, therefore, either the Workmen have crossed age of superannuation or they left for 3-4 years of service.

7. If a Workman claimed that he has worked for more than 240 days in a calendar year, he has to discharge atleast preliminary burden on basis of statement and documents. Admittedly none of the Workmen have entered in witness box before Labour Court since award was passed only on basis of written statement. Therefore, in the light of a judgment passed by Supreme Court in the case of **R.M. Yellatti vs The Asst. Executive Engineer, 2006(1) SCC 106** that a Workman has to discharge burden both orally and documentary, the Court is of the opinion that said burden has not been discharged by Workmen. Relevant part of said judgment is reproduced hereinafter:

“12. Now coming to the question of burden of proof as to the completion of 240 days of continuous work in a year, the law is well settled. In the case of Manager, Reserve Bank of India, Bangalore v. S. Mani reported in (2005) 5 SCC 100, the workmen raised a contention of rendering continuous service between April, 1980 to December, 1982 in their pleadings and in their representations. They merely contended in their affidavits that they had worked for 240 days. The tribunal based its decision on the management not producing attendance register. In view of the affidavits filed by the workmen, the tribunal held that the burden on the workmen to prove 240 days service stood discharged. In that matter, a three-judge bench of this court held that pleadings did not constitute a substitute for proof and that the affidavits contained self-serving statements; that no workman took an oath to state that they had worked for 240 days; that no document in support of the said plea was ever produced and, therefore, this court took the view that the workmen had failed to discharge the burden on them of proving that they had worked for 240 days. According to the said judgment, only by reason of

non-response to the complaints filed by the workmen, it cannot be said that the workmen had proved that they had worked for 240 days. In that case, the workmen had not called upon the management to produce relevant documents. The court observed that the initial burden of establishing the factum of continuous work for 240 days in a year was on the workmen. In the circumstances, this court set aside the award of the industrial tribunal ordering reinstatement.

13. In the case of Municipal Corporation, Faridabad v. Siri Niwas reported in (2004) 8 SCC 195, the employee had worked from 5.8.1994 to 31.12.1994 as a tube-well operator. He alleged that he had further worked from 1.1.1995 to 16.5.1995. His services were terminated on 17.5.1995 whereupon an industrial dispute was raised. The case of the employee before the tribunal was that he had completed working for 240 days in a year; the purported order of retrenchment was illegal as the conditions precedent to section 25-F of Industrial Dispute Act were not complied with. On the other hand, the management contended that the employee had worked for 136 days during the preceding 12 months on daily wages. Upon considering all the material placed on record by the parties to the dispute, the tribunal came to the conclusion that the total number of working days put in by the employee were 184 days and thus he, having not completed 240 days of working in a year, was not entitled to any relief. The tribunal noticed that neither the management nor the workman cared to produce the muster roll w.e.f. August, 1994; that the employee did not summon muster roll although the management had failed to produce them. Aggrieved by the decision of the tribunal, the employee filed a writ petition before the High Court which took the view that since the management did not produce the relevant documents before the industrial tribunal, an adverse inference should be drawn against it as it was in possession of best evidence and thus, it was not necessary for the employee to call upon the management to do so. The High Court observed that the burden of proof may not be on the management but in case of non-production of documents, an adverse inference could be drawn against the management. Only on that basis, the writ petition was allowed holding that the employee had worked for 240 days. Overruling the decision of the High Court, this court found on facts of that case that the employee had not adduced any evidence before the court in support of his contention of having complied with the requirement of section 25-B of Industrial Dispute Act; that apart from examining himself in support of his contention, the employee did not produce or call for any document from the office of the management including the muster roll (MR) and that apart from muster rolls, the employee did not produce offer of appointment or evidence concerning

remuneration received by him for working during the aforementioned period. It is in this light that this court, speaking through Hon'ble Sinha, J., has held as follows:

"15. A court of law even in a case where provisions of the 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.

16. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational."

14. In the case of Range Forest Officer (supra), the dispute was referred to the labour court as to whether the workman had completed 240 days of service. Vide award dated 10.8.1988, the tribunal held that the services were wrongly terminated without giving retrenchment compensation. In arriving at this conclusion, the tribunal stated that in view of the affidavit of the workman saying that he had worked for 240 days, the burden was on the management to show justification in termination of the service. It is in this light that the division bench of this court took the view that the tribunal was not right in placing the burden on the management without first determining on the basis of cogent evidence that the workman had worked for 240 days in the year preceding his termination. This court held that it was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding his termination; that filing of an affidavit is only his own statement in his own favour which cannot be recorded as sufficient evidence for any court or tribunal to come to the conclusion that a

workmen had worked for 240 days in a year. This court found that there was no proof of receipt of salary or wages for 240 days; that letter of appointment was not produced; that letter of termination was not produced on record and, therefore, award was set aside.

15. *In the case of Rajasthan State Ganganagar S. Mills Ltd. (supra), the workman had alleged that he had worked for more than 240 days in the year concerned, which claim was denied by the management. The workman had merely filed an affidavit in support of his case. Therefore, the division bench of this court took the view that it was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding his termination. This court observed that filing of an affidavit was not enough because the affidavit contained self-serving statement of the workman which cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that the claimant had worked for 240 days in a year. Further, this court found that there was no proof of receipt of salary or wages for 240 days and, therefore, 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. On the facts of that case, the court found that even if the period for which the workman had alleged to have worked was taken into account, as mentioned in his affidavit, still the said workman did not fulfill the requirement of completion of 240 days of service and, therefore, this court set aside the award of the labour court.*

16. *In the case of M.P. Electricity Board (supra), the workmen were engaged by the board on daily wages for digging pits to erect electric polls. It was the case of the board that on completion of the project, the employment was terminated and whenever a similar occasion arose for digging pits, the workmen were re-employed on daily wages and, therefore, their employment was not permanent in nature nor had the workmen completed 240 days of continuous work in a given year. The project jobs came to an end in 1991 and the workmen were never re-employed by the board. Being aggrieved by the said non-employment, the workmen filed applications under MP Industrial Relations Act seeking permanent employment, primarily on the ground that they have completed 240 days in a year and their discontinuation of service amounted to retrenchment without following the legal requirements. The board denied the allegations made in the application before the labour court. An application was moved before the labour court by the workmen seeking direction to the board to produce the muster roll for the concerned period. However, no other material was produced by the workmen to establish the fact that they had worked for 240 days continuously in a given year. Some of the workmen were also examined*

before the labour court. However, no document was produced in the form of letter of appointment, receipt indicating payment of salary etc. After examining the entry in the muster rolls, the labour court came to the conclusion that the workmen had not worked for 240 days continuously in a given year, hence, they could not claim permanency nor could they term their non-employment as retrenchment. Aggrieved by the award of the labour court, the workmen preferred an appeal before the industrial court at Bhopal which took the view that since the board has failed to produce the entire muster roll for the year ending 1990, an adverse inference was required to be drawn against the board and solely based on the said inference, the industrial court accepted the case of the workmen that they had worked for 240 days continuously in a given year. Accordingly, the industrial court granted reinstatement to the workmen with 50% back wages. Drawing of such an adverse inference was challenged before this Court by the MP Electricity Board. In the light of the aforestated facts, this court opined that the industrial court or the High Court could not have drawn an adverse inference for non-production of the muster rolls for the years 1990 to 1992, particularly in the absence of a specific plea by the claimants that they had worked during the period for which muster rolls were not produced. This court observed that initial burden of establishing the factum of their continuous work for 240 days in a year was on the workmen and since that burden was not discharged, the industrial court and the High Court had erred in ordering reinstatement solely on an adverse inference drawn erroneously.

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.”

8. In aforesaid circumstances, since from perusal of impugned awards it is evident that Workmen have not discharged even initial burden, therefore, the finding that they have worked more than 240 days in a calendar year is a perverse finding.

9. Normally, in these circumstances an order of remand can be passed, however, since the Workmen have already crossed age of superannuation or about to cross the age of superannuation, therefore, no fruitful purpose will be served to remand the matter.

10. In view of above, writ petitions are allowed. Impugned awards dated 07.01.2015 (in Writ-C Nos. 30128 of 2015 and 30129 of 2015) and 25.08.2015 (in Writ-C Nos. 54061 of 2015 and 54062 of 2015) are hereby set aside and legal consequence of it shall follow.

(SAURABH SHYAM SHAMSHERY, J.)

September 30, 2026

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