

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 877 OF 2015

KHATIB SAYED BAHUDDIN SD. SIROJDDIN
VERSUS
THE CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD, BEED & ANR

...
Advocate for Petitioner : Shri Thorat N.R. h/f Shri Sanap Nilesh S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 10, 2015
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PER COURT :-

1. The petitioner is aggrieved by the award dated 12.9.2012, delivered by the Labour Court in Reference (IDA) No.69 of 2007, by which, the reference has been rejected.
2. This petition has been filed for challenging the award after a passage of 2 years and 2 months.
3. The submissions of the learned Advocate for the petitioner are summarized as under:-
 - (a) The petitioner claims to have been orally appointed on 1.1.1987 as a Mason in Grade-I.
 - (b) The petitioner has been orally terminated on 1.7.1988.
 - (c) Industrial Dispute is raised and the Reference is made to the

Labour Court by order dated 6.9.2007 which is practically 19 years after the oral termination.

(d) By impugned judgment and award dated 12.9.2012, the reference has been rejected.

(e) Respondent - employer did not produce relevant documents to prove the tenure of employment of the petitioner despite issuance of a notice for production of documents.

(f) A certificate is issued by one Shri Shaikh Mohd. Ibrahim, purportedly an Engineer with the respondent Zilla Parishad, declaring that the services of the the petitioner are satisfactory.

(g) The said certificate dated 30.6.1988, has been disbelieved by the Labour Court.

(h) Presumption is that the petitioner has worked for more than 240 days in the continuous and uninterrupted service of the respondents.

(i) Presumption is that the oral termination is bad in law.

(j) 18 or 19 years of delay is not material in an industrial dispute raised under Section 2A read with Section 10(1) of the Industrial

Disputes Act, 1947.

(k) The petitioner has led evidence and claimed that he has completed 240 days in continuous service.

(l) Impugned judgment and award is unsustainable.

(m) Reliance is placed on the judgment of this Court in the matter of Executive Engineer PWD Vs. Sudhakar Narayanrao Mendhe [2015 (1) Mh.L.J. 226].

4. I have heard the learned Advocate for the petitioner for quite sometime. It is not in dispute that there is not an iota of documentary evidence on record to prove even the appointment of the petitioner.

5. The certificate dated 30.6.1988 issued by one Shaikh Mohd. Ibrahim, claiming to be an Engineer with the respondent, has been dis-believed by the Labour Court on the ground that the respondent - department denied any authorization to the said Engineer to issue any certificate to any daily wager. There was no outward number of the office of the Zilla Parishad, Beed to indicate the authenticity of the certificate. The Stamp and Seal on the certificate is quite different in comparison to the Stamp and Seal of the Zilla Parishad, Beed available on other documents at the relevant time in 1988. Taking into account such circumstances, the Labour Court, in my view, has rightly concluded that the said document is doubtful.

6. The respondent had taken a stand that the petitioner was never appointed in its employment, much less, ever terminated. The law crystallized mandates an employee to prove his appointment and completion of 240 days in the continuous and uninterrupted service of the employer. The Labour Court has concluded that there is no material on record to indicate that the petitioner was appointed in employment and was continued for more than 240 days in continuous service.

7. The Labour Court has further concluded that the appointment and continuance in service cannot be on the basis of presumption. The ratio laid down in the cases of Khashaba K. Jadhav Vs. S.H. Kelkar and Co. Ltd. and another [2007 (3) Mh.L.J.121], State of Maharashtra and Dattatraya Digambar Birajdar [2007 (114) FLR 119] and Surendranagar District Panchayat Vs. Dahyabhai Amarsinh [2005 III CLR 892] has been rightly appreciated by the Labour Court, in concluding that the workman has to establish his appointment and completion of 240 days in employment.

8. Reliance on the judgment of this Court in the case of Executive Engineer PWD (supra), is misplaced. In the said case the workman had proved his engagement and had established that he has completed more than 240 days in continuous service with the employer. The award of the Labour Court had granted reinstatement with continuity of service to the concerned workman.

9. Nevertheless, one conclusion emerging from the said judgment as regards adverse inference against the employer for having not retained documents despite the claim of the workman raised against termination after a passage of 10 years, is drawn by this Court without taking into account the ratio laid down by the Apex Court as well as this Court in the cases referred to above. The above said judgments do not appear to have been cited, when this Court delivered the judgment on 1.8.2014 in the Executive Engineer PWD judgment (supra).

10. In the light of the above, I do not find that there is any error committed by the Labour Court in rejecting the Reference. The petition is devoid of merits and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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akl/d