

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Letters Patent Appeal No. 234 of 2013.
in
Writ Petition No.1581 OF 2012

Subhash s/o Baburao Vikhar
v.
Chief Executive Officer and another.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.B. Khan, counsel for appellant.
Shri R.J. Kankale, counsel for respondent no. 1.
Mrs. K. Deshpande, AGP for respondent no.3.

CORAM : B.R. GAVAI AND
Mrs. MRIDULA R. BHATKAR, JJ.

DATED : JANUARY, 13th , 2015.

The appellant challenges the common order passed by the learned Single Judge of this court in W.P. No. 1581/2012 and W.P. No. 1976/2012 dated 24.1.2013.

The learned Labour Court, Chandrapur in Reference (I.D.A.) No.10/2006 has held that the respondent no.2 employee has completed more than 240 days of service preceding the date of termination and therefore there is violation of the provisions of Section 25-F and 25-G of the the Industrial Disputes Act, 1947. The Labour Court, therefore, directed the employer to reinstate the employee in service. However, the claim of continuity of service and back wages was rejected. Being aggrieved thereby the petition came to be filed bearing writ petition no. 1581/2012 by the respondent municipal council challenging the findings of the Labour Court whereas writ petition No. 1976/2012 was filed by the present appellant challenging

the denial of continuity of service and back wages. Both the petitions have been rejected by the impugned order.

The learned counsel appearing on behalf of the appellant submits that the learned Single Judge has interfered in finding of fact as recorded by the learned Labour Court. He submits that when the learned Labour Court on the basis of the evidence led before it had come to the conclusion that the appellant employee had worked continuously for more than 240 days prior to his termination, there was no need to interfere in the said finding.

No doubt, normally a court while exercising extraordinary jurisdiction under article 226 of the Constitution would not reappreciate the evidence. However, that does not mean that the court would not be entitled to interfere even when the finding of fact arrived at by the trial court is perverse.

The perusal of the order passed by the learned Labour Court would reveal that the material which is placed on record and considered by the Labour Court shows that the appellant was working for two months. The Learned Labour Court has held that though the burden is upon the worker to prove that he was working, there is also a burden on employer to produce the documents. The perusal of the order does not reveal that which documents are placed on record by the appellant worker and that which documents are not produced by the employer so as to draw an adverse inference against the employer.

In that view of the matter, the findings of the learned Labour Court that the worker was working continuously for the period of 240 days was without any evidence and as such can be said to be perverse.

The learned Single Judge has, therefore, rightly come to the conclusion that the findings arrived at by the learned Labour Court was without any evidence on record.

No case is made out for interference. The Letters Patent Appeal is dismissed with no order as to costs.

JUDGE

JUDGE

Hirekhan