

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION Nos.23452 AND 24645 OF 2000

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W.P.No.23452 of 2000

Between :

Executive Engineer,
Marketing Department, Warangal
and another.

... Petitioners

AND

Presiding Officer,
Industrial Tribunal Labour Court, Warangal,
And another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 30.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE C. PRAVEEN KUMAR

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| 1. | Whether Reporters of Local
newspapers may be allowed to see
the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may
be marked to Law
Reporters/Journals? | Yes/No |

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos.23452 AND 24645 OF 2000

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COMMON ORDER :

Since both the writ petitions are filed against the award dated 06.04.2000 in I.D.No.169 of 1996 passed by the Industrial Tribunal-cum-Labour Court, Warangal, the same are being disposed of by this common order.

2. W.P.No.23452 of 2000 is filed by the employer, whereas W.P.No.24645 of 2000 is filed by the workman.

3. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in I.D.No.169 of 1996.

4. The case of the petitioner/workman is that he was appointed as Work Inspector on daily wage basis on 15.03.1989 and since then he worked continuously, without any break, upto 28.02.1992. Thereafter he was orally terminated from service on 29.02.1992. Challenging the said termination, the petitioner filed I.D.No.169 of 1996 on the ground that though he has completed 240 days of continuous service, the Executive Engineer terminated his services without following the procedure.

5. In the counter filed by the Executive Engineer, it is contended that the petitioner never completed 240 days of continuous service and that it is incorrect to say that they have violated the provisions of the Industrial Disputes Act while terminating his services.

6. During course of trial, the petitioner himself is examined as WW.1

and got marked Exs.W.1 & W.2. On behalf of the respondents, the Executive Engineer examined himself as MW.1 but however no documents were marked on his behalf. After considering the oral and documentary evidence, by an award dated 06.04.2000, the Industrial Tribunal while setting aside the oral termination of the petitioner dated 29.02.1992 directed the respondents to reinstate the petitioner into service as Work Inspector on daily wages as 'Fresh Recruit'. Challenging the same, these writ petitions are filed by the workman and the employer.

7. Learned counsel for the petitioner/workman submits that since the petitioner has worked for more than 240 days continuously, the order of Tribunal directing the respondents to reinstate the petitioner into service afresh is illegal. In support of his contentions, he placed reliance on the judgment of the Apex Court in **H.D.Singh v. Reserve Bank of India and others, Devinder Singh v. Municipal Council, Sanaur and Harjinder Singh v. Punjab State Warehousing Corporation.**

8. On the other hand, learned counsel for the respondents would submit that the petitioner has not put in service of 240 days, but he worked only for 122 days within the specified dates between 15.03.1989 and 28.02.1992. Hence, Section 25-F of the Industrial Disputes Act does not get attracted to this case.

9. A perusal of the record would show that in the evidence of WW.1, the petitioner has stated that he was appointed as Work Inspector orally on daily wages on 15.03.1989 and he worked under Deputy Executive Engineer, Marketing Department, Warangal, continuously without any break upto 28.02.1992. He further deposed that when he went to his duty as usual on 28.02.1992, he was asked by the Deputy Executive Engineer-2nd respondent not to attend for duty any more. Ex.W.1 is the service certificate dated 24.09.1992 of WW.1 issued by the Deputy Executive Engineer to the effect that the petitioner has worked as Work Inspector from 15.03.1989 to February, 1992 on daily wages. In his chief-examination, M.W.1

deposed that the petitioner worked for 24 days in June, 1989, 25 days in July, 1989, 25 days in March, 1989, 23 days in June, 1991 and 25 days in July, 1991. In the cross-examination, MW.1 admitted the stamp and seal on Ex.W.1. Though the burden lies on the respondents to prove that the petitioner worked for less than 240 days continuously, they did not make any efforts to file muster rolls or payment of wage register maintained for N.M.R. workers to show that the petitioner worked for less than 240 days.

10. In H.D.Singh (1 supra) while dealing with the issue of striking off the name of a Tikka Mazdoor from rolls of the respondents therein, the Apex Court held that the striking off the name of the appellant from List II amounts to retrenchment under Section 2(oo) of the Industrial Disputes Act and the same is in violation of Section 25-F of the Industrial Disputes Act. Accordingly, the Court directed the respondent-Bank to enlist the appellant as a regular employee, as Tikka Mazdoor, reinstate him and pay him his back wages up-to-date.

11. In Devinder Singh (2 supra), the Apex Court held that the source of employment and the conditions of employment/contract of service were not relevant to decide whether or not a person should be given the benefits and there is no distinction between the full-time and part-time employment in the language of Section 2(s) of the Act. The relevant observations are as under:

“13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing while time job is a workman and the one employed

on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.”

12. In view of the above circumstances and the judgments referred to above, I am of the view that the Tribunal has rightly held that the petitioner has worked for more than 240 days continuously in twelve months preceding to his removal. However, since the respondents failed to produce any material to substantiate their case that the petitioner has not put in continuous service of 240 days and that notice was issued to the petitioner, the petitioner is entitled for reinstatement with continuity of service.

13. Accordingly, while dismissing W.P.No.23452 of 2000 filed by the respondents-employer, W.P.No.24645 of 2000 filed by the petitioner-workman is allowed, to the extent that the petitioner is directed to be reinstated with continuity of service and the respondents are directed to pay the consequential benefits, if any.

14. Miscellaneous petitions pending, if any, shall stand closed.

C. PRAVEEN KUMAR, J

30th July 2015.

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