

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**TUESDAY, THE TWENTY SIXTH DAY OF JULY,
TWO THOUSAND AND SIXTEEN**

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Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.5009 of 2011

Between:

Smt Dasari Venkat Lakshmi, w/o. Polarao, aged about 31 years,
Occ:Ex-Sweeper, R/o.5-15-13/2, 36th Ward, Alkot Garden,
Prakash Street, Rajahmundry, East Godavari District.

.. Petitioner

AND

The General Manager, Telecom, BSNL, Fort Gate, Rajahmundry,
East Godavari District and another.

.. Respondents

The Court made the following:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.5009 of 2011

ORDER

Petitioner claims to have engaged as daily wage worker to work as Sweeper and to supply water in the first respondent's office. According to the petitioner, her first engagement was on 25.11.2002 and worked up to 31.08.2004. With effect from 01.09.2004, petitioner was not engaged though no written order of termination was issued. Alleging the action of the first respondent amounted to termination without following due process of law, on 11.10.2004, petitioner made a representation to continue to engage her. No reply was furnished. On 16.11.2004, petitioner raised conciliation proceedings. On submission of failure report by the Conciliation Officer, by order dated 22.07.2005, the Government referred the dispute to the Industrial Tribunal, which was registered as I.D.No.62 of 2005. In the claim statement as well as in the deposition, it was the assertion of the petitioner that the petitioner worked with first respondent and illegally her services were terminated without following the process of notice and paying the compensation for such termination. The Industrial Tribunal passed award rejecting the claim of the petitioner on the ground

that no material evidence was brought on record in support of the claim that the petitioner worked with first respondent for more than 240 days. Aggrieved by the award of the Industrial Tribunal, this writ petition is filed.

2. Heard learned counsel for the petitioner and Sri R.S.Murthy, learned counsel for respondent No.1 and learned Government Pleader for Labour for respondent No.2.

3. Learned counsel for the petitioner submits that the petitioner has worked for the relevant period and has completed a minimum period of 240 days in a year and therefore, before terminating the services of the petitioner, it is mandatory for the first respondent to follow the procedure as envisaged under Section 25-F of Industrial Disputes Act, 1947 ('for short 'the Act') and non-compliance of the said provision vitiates the order of termination. Learned counsel submits that no order of termination was passed and the procedure as envisaged by the Act is not followed. He submits that the averment of the petitioner that she worked with the first respondent is admitted by the first respondent in the counter affidavit filed before the Industrial Tribunal. He further submits that the Industrial Tribunal erred in dismissing the claim on the ground that no material evidence was produced. Learned counsel further submits that there is no requirement to produce material when categorical assertion is made and by standing in the witness box, oral evidence is made, which is not rebutted. He further submits that the engagement is not denied by the first respondent and therefore, the Industrial Tribunal ought to have

accepted the claim of the petitioner. He further submits that the Industrial Tribunal has not considered the issue in proper perspective. He further submits that the Tribunal erred in not considering the written statement filed by the petitioner. He further submits that the Tribunal noticed wrong facts in paragraph 10. The facts mentioned in paragraph 10 relate to the decision relied upon by the petitioner in support of her claim that while calculating 240 days, holidays should also be taken note of, whereas the said facts are noted as if the facts belong to the petitioner. According to the learned counsel, petitioner worked with the first respondent only from the year 2002, whereas the facts noted in paragraph 10 relate to the year 1975-76. This itself shows total non-application of mind. While referring to the averments in the counter affidavit filed in the Industrial Dispute, learned counsel submits that there is no dispute regarding engagement as the plea raised by the petitioner was not rebutted.

4. Sri R.S.Murthy, learned counsel for respondent No.1, submits that even in the counter affidavit filed before the Industrial Tribunal, there was no admission by the first respondent and on the contrary, there was a categorical denial of the relationship of master and servant between the petitioner and the first respondent. The burden lies on the workman to prove with cogent evidence that she was engaged as daily wage worker and worked for more than 240 days and to seek the application of the provisions of the Act. In the case on hand, as rightly held by the Tribunal, petitioner failed to discharge the burden. He, therefore, supports the decision of the Industrial Tribunal.

5. It is the categorical assertion of petitioner that she worked for more than 240 days between November 2002 to October, 2004. In paragraph No.4 of the counter affidavit filed before the Industrial Tribunal, the first respondent averred as under:

“but it is submitted that the services of the claimant were utilized for fetching water to fill up the water containers and for cleaning the office on daily wage basis of Rs.25/- per day and she used to work not more than two hours a day and five days in week. She was paid once in a week for the period worked. There is no appointment order for the claimant by the respondent. The services of the claimant intended to be used on temporary basis only and she is not at all an employee of the respondent. As such there is no employer and employee relationship between respondent and the claimant and she is not entitled to make any claim before the Hon'ble Tribunal and the provisions of Industrial Tribunal Disputes Act cannot be invoked by the claimant and there is no jurisdiction to the Hon'ble Tribunal.”

This statement of the first respondent would clearly show that the petitioner worked with the first respondent 5 days in a week and she did not work on Saturdays and Sundays because the office of first respondent was closed on these days. However, the counter affidavit is silent as to how long the petitioner was engaged. Though there is denial of the claim of the petitioner that she worked for more than 240 days, no material is placed by them to show that the petitioner's engagement was for less than 240 days. On the contrary, first respondent was trying to defend his stand by contending that the engagement of the petitioner was for specified work for a day and when the work assigned is over, it amounts to completion of work and when engaged next day, it would amount to fresh appointment. This argument of the first respondent cannot

be countenanced.

6. It is well known practice for organizations, more particularly, Government organizations, not maintaining any muster roll of employees engaged on daily wage basis and not maintaining proper register of their attendance. Sometimes, payments are made by vouchers and sometimes, in cash. Thus, it is not possible for the daily wage employees to have record to support their claim that they have been working with employer. In the instant case, respondents admitted the fact of the engagement of the petitioner.

7. The only issue is whether petitioner worked for 240 days or more in a year to seek application of Section 25-F of the Act. The respondents did not accept that such engagement was continuous and the petitioner worked for 240 days. Industrial Tribunal erred in rejecting the claim merely because the petitioner could not produce documentary evidence in support of the contention, more particularly, when first respondent was set *ex parte* and the evidence given by the petitioner was not rebutted and when categorical statement was made in the counter affidavit admitting the factum of engagement of the petitioner. As seen from the award, the Tribunal mis-directed itself in analyzing the factual background and noting the facts of precedent decision of Supreme Court relied upon by the petitioner to dismiss the claim.

8. On this ground, the award is liable to be set aside and the matter is required to be remitted. The claim of working for 240 days is not rebutted by respondents. Thus, disengagement of

petitioner amounts illegal retrenchment. The only issue remains is what relief can be granted to petitioner. However, the issue of disengagement relates to the year 2004 and at this stage, remitting the matter to the Industrial Tribunal for reconsideration on the question of consequential relief would not be just and equitable.

9. At this stage, learned counsel for the petitioner submits that the Supreme Court in the case of **Bharat Sanchar Nigam Limited v. Man Singh**^[1] held that instead of reinstatement, consolidated amount of compensation may be determined. The said principle is followed by the Supreme Court in the case of **Bharat Sanchar Nigam Limited v. Bhurumal**^[2].

10. Following the decision in **Man Singh** (1 supra), in **Bharat Sanchar Nigam Limited** (2 supra), it was held that in matters of this nature, consolidated amount of compensation can be determined instead of directing re-engagement, more particularly, when there is huge gap between the date of termination and the date of adjudication. In **Man Singh** (1 supra), the claim was the workman worked about little more than 240 days while in **Bharat Sanchar Nigam Limited** (2 supra), the employee was working for longer period. Therefore, though in **Man Singh's** case (1 supra) the compensation of Rs.2 lakhs was determined, in the subsequent decision, the compensation was enhanced.

11. In the case on hand, the claim of the petitioner is that he worked between 25.11.2002 to 31.08.2004 i.e, approximately 18 months. Thereafter, she is out of service. Therefore, it is not just

and equitable to direct reinstatement. Having regard to the service rendered by the petitioner, I deem it appropriate to award compensation of Rs.2,50,000/- to the petitioner, in lieu of reinstatement.

12. The Writ Petition is, accordingly, disposed of, directing the first respondent to pay an amount of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) to the petitioner as compensation for illegal retrenchment, within a period of two months from the date of receipt of a copy of this order. In case of any delay in payment of the amount beyond the period of time fixed above, the first respondent shall pay simple interest @ 8% per annum for the delayed payment. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

26th July, 2016
sj

[\[1\]](#) (2012) 1 SCC 558

[\[2\]](#) (2014) 7 SCC 177