

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.20411 of 2004

ORDER:

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of Certiorari calling for the records from the Industrial Tribunal-II, Hyderabad and quash the award dated 12.12.2002 in I.D.No.90 of 2002 and consequently direct the respondents to reinstate the petitioner into service with full back wages and continuity of service along with all other attendant benefits and to pass such other necessary orders.

The contention of the learned counsel for the petitioner is two fold:

1. The findings recorded by the Tribunal are perverse as the same are not based on material much less legally admissible material;
2. The Tribunal has not considered the documentary evidence filed by the petitioner and dismissed the I.D. on erroneous and untenable grounds.

Per contra, learned counsel for the respondent submitted that the petitioner failed to prove that he worked continuously for a period of 240 days within 12 months, therefore, he is not entitled for any relief.

The facts leading to filing of the present petition are briefly as follows:

The petitioner was appointed as casual labour in the emergency squad by the Executive Engineer, Zone-II MCH for a period of three years from 1982-83, 1983-84 and 1984-85. The Executive Engineer issued certificate to that effect. Subsequently, the petitioner was appointed as NMR Cleaner and was posted under the second respondent for a period of 89 days as per the proceedings

No.1824/CEO/MCH/E4/91, dated 10.06.1991. The petitioner continued as NMR up to 10.10.1991. The respondent paid salary of Rs.475/- per month to the petitioner. In the month of October 1991, the respondents terminated the services of the petitioner without following the procedure as contemplated under Section 25(F) of Industrial Disputes Act. The petitioner filed an application under Section 2-A(2) of the Industrial Disputes Act before the Labour Court-II and the same was numbered as I.D.No.561 of 2000. Subsequently, the same was transferred to Industrial Tribunal-II, Hyderabad and renumbered as I.D.No.90 of 2002. The Industrial Tribunal dismissed the application of the petitioner on 31.12.2002 and the same was published vide G.O.Rt.No.2646. Hence, the present writ petition.

As per the contention of the petitioner, he worked for a period of 240 days immediately preceding to termination of his services on 10.10.1991. The burden of proof lies on the petitioner to prove that he worked continuously for a period of 240 days in a year prior to termination of his services. To substantiate his case, the petitioner got marked Ex.W1 and Ex.W2 before the Tribunal. The Tribunal framed the following points for determination.

1. Whether the petitioner worked under the respondents for the years 1982-83, 1983-84, 1984-85 and worked for more than 240 days in each year?
2. Whether the petitioner worked continuously from the year 1984-85 till he was temporarily appointed for 89 days by the respondents on 10.06.1991?
3. Whether the petitioner worked continuously from 10.06.1991 till 10.10.1991 even though he was appointed for 89 days under the proceedings No.1824/CTO/MCH/E4/91 dated 10.06.1991?
4. Whether the petitioner would be entitled for reinstatement and for continuity of service, backwages and other attendant benefits as prayed for?

To substantiate his case, the petitioner mainly placed reliance on Ex.W1 salary certificate and Ex.W2 proceedings of the Chief Transport Officer, MCH, Hyderabad, dated 10.06.1991.

It is not the case of the petitioner that he worked during the years 1982-83, 1983-84 and 1984-85 in pursuance of the appointment order issued by the Commissioner of Municipal Corporation, Hyderabad. The Industrial Tribunal made an observation that Ex.W1 does not contain the date of issue and any authentic details such as the number of days worked by the petitioner and the category under which he worked. Tribunal also made an observation that Ex.W1 was not issued by a competent person. Even as per the testimony of the petitioner, he attended the digging work as and when necessary in Zone-II of MCH. It is not possible to arrive at a conclusion that the petitioner worked for a period of 240 days in any year during the years 1982-83, 1983-84 and 1984-85. A perusal of Ex.W2 shows that the petitioner was appointed for a period of 89 days in the year 1991. The petitioner has not produced any document to establish that he worked as NMR in the respondent corporation with effect from 10.06.1991 to October 1991. The petitioner has not filed any document to prove that he worked in the respondent corporation as NMR or in any other capacity from 1985 to 10.06.1991. The petitioner miserably failed to establish that he worked from 1985 to 10.06.1991 in the respondent corporation in any capacity whatsoever. The petitioner has not taken any steps to secure salary certificate or any other document to substantiate his claim. The respondents are also not disputing the genuineness of Ex.W2. Even if the recitals of Ex.W2 are taken into consideration, the petitioner worked for a period of 89 days. Even assuming but not admitting that the petitioner worked from 10.06.1991 to 10.10.1991 it is only for a period of 123 days. If any employee works continuously for a period of 240 days within 12 months, then the employer has no right whatsoever to terminate the services of such

employee without following the procedure as contemplated under Section 25(F) of I.D. Act. Even as per the case of the petitioner, his services were terminated on 10.10.1991. The petitioner filed the application under Section 2-A(2) of I.D.Act before the Tribunal in the year 2000. If really the petitioner worked for a period of 240 days on or before 10.10.1991, what prevented him to file an application under Section 2-A(2) of the Act in the year 1991 itself. It is not the case of the petitioner that he worked up to the year of 2000 in the respondent Corporation. Even as per the case of the petitioner, his services were terminated on 10.10.1991, if that is so why the petitioner has not approached the labour Court for a period of nine years. The petitioner has not assigned any reasons much less cogent and valid reasons for non-approaching the labour Court for a period of nine years. This also creates any amount of doubt with regard to the stand taken by the petitioner. As observed earlier, Ex.W1 is no way helpful to the petitioner. The material available on record falls short to establish that the petitioner worked continuously for a period of 240 days within 12 months immediately preceding to termination of his services, thereby to take shelter under Section 12-F of the Industrial Disputes Act. The labour Court considered the oral testimony of P.W.1 and Exs.W1 and W2 in right perspective and arrived at a conclusion that the petitioner failed to establish that he worked for a period of 240 days continuously within 12 months. The possibility of filing of the petitions of this nature in order to get employment cannot be ruled out completely. While exercising the jurisdiction under Article 226 of the Constitution of India, this Court can set aside the findings of the labour Court on the following two grounds:

1. The findings recorded by the labour Court are not based on any material;
2. If the findings recorded by the labour Court are based on the evidence, which is not legally

admissible, and

3. If there is an error apparent on the face of the
record.

In the instant case, the findings recorded by the Tribunal are supported by oral and documentary evidence, which is admissible under law. The Labour Court has assigned cogent and valid reasons to its findings. Viewed from any angle, there are no grounds much less valid grounds to interfere with the findings of the labour Court.

In the result, the writ petition is dismissed. Consequently, the miscellaneous petitions if any pending in this writ petition shall stand closed.

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T.SUNIL CHOWDARY, J

April 27, 2016.

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