

common point is involved.

In I.D.No.33 of 1998, the claimant N.Suresh challenged the action of termination issued by petitioner herein and the Labour Court on a consideration of material on record directed the petitioner herein to reinstate the said Suresh into service with continuity of service with all attendant benefits without back wages.

Similarly one B.Venkatesh filed I.D.No.34 of 1998 questioning the termination order issued by petitioner herein and Labour Court on a consideration of material, directed petitioner herein to reinstate the said Venaktesh into service with continuity of service with all attendant benefits but without back wages.

Writ petitioner herein who is one of the respondents before Industrial Tribunal filed these two writ petitions separately challenging the orders of the reinstatement.

The brief averments of the affidavit filed in support of the writ petition No.13101 of 2003 are as follows:

Petitioner herein engaged first respondent (Venkatesh) as N.M.R. cleaner for the period from 1-10-1991 to 31-3-1995 and after 31-3-1995, first respondent has not reported for duty and he voluntarily discontinued himself from attending the work and he is only N.M.R, no appointment order was issued to him and whenever he is not reporting to duty, he was not paid the wages but the first respondent three years after 31-3-1995 filed case before the Labour Court seeking reinstatement and the petitioner herein is not an Industry and first respondent is not a workman but without considering these aspects, Labour Court unilaterally passed order directing reinstatement. It is further stated that Labour Court erroneously held that Section 25 F of the Industrial Disputes Act is not complied with, but the said provision has no application and Labour Court has not discussed the legal and factual aspects properly and granted relief on presumptions which is impermissible under law.

The brief contents of affidavit filed in support of W.P.No.13121 of 2003 are as follows:

Petitioner herein engaged first respondent (Suresh) as N.M.R. from 1-10-1991 in February, 1994 and after February, 1994, he worked as casual labourer upto December, 1997 and thereafter, he has not reported to duty and thereafter, he voluntarily discontinued himself from attending the work and he is only N.M.R, no appointment order was issued to him and whenever he is not reporting to duty, he was not paid the wages but the first respondent three years thereafter filed case before the Labour Court seeking reinstatement and the petitioner herein is not an Industry and first respondent is not a workman but without considering these aspects, Labour Court unilaterally passed order directing reinstatement. It is further stated that Labour Court erroneously held that Section 25 F of the Industrial Disputes Act is not complied with but the said provision has no application and Labour Court has not discussed the legal and factual aspects properly and granted relief on presumption which is impermissible under law.

On the other hand, it is the contention of respective employees that they have not discontinued to attend the work on their own but as the authorities orally instructed them not to attend for duty, they obliged it and therefore, it is an oral termination without any notice and without paying any retrenchment compensation.

Heard both sides.

Both side Advocates submitted their arguments, supporting the respective contentions of their clients.

The main contention of the writ petitioner is that the employees voluntarily discontinued to attend the work and that there is no termination to attract provision of Industrial Disputes Act but the Labour Court without considering this aspect ordered reinstatement on the presumption that the employees have put in required service and by accepting

their version that there was an oral termination.

Advocate for petitioner submitted that employee B.Venkatesh himself stated that he worked from 1-10-1991 to 31-3-1995 and did not whisper anything as to what happened after 31-3-1995 which would clearly disclose that he voluntarily discontinued from attending work, therefore, he cannot claim the benefits of Section 25 F but the Labour Court without seeing it and without there being any termination order on presumption granted relief.

On the other hand, advocate for employees submitted that in both the cases there is clear evidence to show that both employees worked for more than 240 days in calendar year and the employer without following due procedure terminated their service orally and the Labour Court rightly considered these aspects and granted relief and there are absolutely no grounds to interfere with the order of the Labour Court.

Now the point that would arise for my consideration in this writ petition is whether the orders Labour Court are legal, correct and proper?

POINT:

From the material, it is clear that Venkatesh i.e. first respondent in W.P.No.13101 of 2003 worked as N.M.R. from 1-10-1991 to 31-3-1995 and Suresh i.e., first respondent in W.P.No.13121 of 2003 worked as N.M.R. from 1-10-1991 to February, 1994 and thereafter as daily wage casual labour upto December, 1997. It is also clear from the material on record, both these employees were not allowed to work from a respective specified date and their contention is that they were orally instructed not to attend to the duties. In both the cases, respective workmen is examined before the Labour Court

who reiterated their version on oath. According to the evidence of Venkatesh, he was appointed on 1-10-1991 on a consolidated pay of Rs.100/- and he worked in that capacity i.e., as cleaner till 31-3-1995 and as he was instructed not to attend from duty from 1-4-1995, he did not attend to work. He also deposed that no notice was given to him terminating his services and that he was not paid any retrenchment compensation and his juniors were continued to attend the work and therefore, he approached Labour Court. The other employee Suresh deposed that he was appointed on 1-10-1991 as N.M.R. on consolidated pay of Rs.400/- and that he worked as Forest Watcher till 5-6-1997, thereafter on the oral instructions of the authorities, he discontinued to attend from 3-3-1998. He also deposed that no notice was given to him and no retrenchment compensation was paid to him and that he came to know that juniors are still continuing to work therefore, he approached Labour Court.

The department has not produced any records to discard the testimony of these two employees particularly to the period of working referred to by them. Admittedly, no termination notice was issued to these employees though from their evidence, it is shown that they worked continuously for more than 240 days.

Though these two employees were cross-examined nothing could be elicited from them to support the version of department. Advocate for petitioner referred to decision of Supreme Court in *MUNICIPAL CORPORATION vs. SIRI NIWAS* (^[1]), *HUDA vs. JAGMAL SINGH* (^[2]), *HARYANA URBAN AUTHORITY VS. OM PAL* (^[3]) and *STATE OF U.P. VS. PARVEZ AKHTAR* (^[4]).

In *MUNICIPAL CORPORATION vs. SIRI NIWAS* (1st cited) on record the total number of working days of workman therein was 184 days only and he has not completed 240 working days in a year on that ground, the order of the Labour Court was set aside.

In *HUDA vs. JAGMAL SINGH* (2nd cited) also, though there was no material to show that the employee therein has worked for 240 days in a calendar year, the Labour Court made a calculation on assumption and gave a finding that the employee therein has worked for 240 days and extended benefit though the fact remains that the worker has not worked for the statutory period of 240 days.

In *HARYANA URBAN AUTHORITY VS. OM PAL* (3rd cited), the appointment order in favour of employee therein had been issued by two special divisions separately but the Labour Court treated both the establishments as one and the same counted service as continuity of service and that was found incorrect.

In *STATE OF U.P. VS. PARVEZ AKHTAR* (4th cited), the Honourable Supreme Court has ordered for payment of compensation in lieu of the reinstatement while taking the time gap in between termination and the actual reinstatement.

All these decisions have no application to the case on hand because there is ample evidence on record to show employees working for more than 240 days which remained unchallenged.

Both the employees have continuously worked for more than 240 days in each calendar year and the department has not issued any notice of termination and not followed any procedure contemplated under Industrial Disputes Act. In one case, the employee has approached

the Labour Court within few months and in the other case, the employee has approached the Labour Court within three years and when the claim of the employees before the Labour Court is not barred by limitation, it is not open to the employer to contend that the employee by name Venkatesh approached the Labour Court belatedly.

Though it is contended that the department of writ petitioner herein is not an industry and do not fall within the definition of Industry as per provisions of Industrial Disputes Act both side advocates submitted that this point is settled by legal pronouncements according to which the petitioner department also comes under the definition of industry, therefore, there is need to go into that aspect.

In the Industrial Disputes Act, certain protections were extended to the workmen and the employees are entitled to have benefit of those protections provided, they establish necessary requirements. Even otherwise principles of industrial disputes demand a reasonable opportunity is to be given to the employee before discontinuing his service particularly, when the employee has put in the required qualifying service of 240 days in a calendar year.

Here even from the admitted case of the petitioners, neither notice of termination was issued nor retrenchment compensation was paid to these employees. Of course, the contention of the department is that the employees themselves did not attend to the work voluntarily. Even for unauthorized absence, when an employee has put in required qualifying service, procedure is to be followed to terminate the service of such employee. Here the department has not followed any such procedure, therefore, the Labour Court has rightly accepted the claim of employees and ordered for reinstatement without back wages and I do not find any illegality in the order of the Labour Court.

For these reasons, I am of the view that both the writ petitions are devoid of merits and are liable to be dismissed.

Accordingly, these two writ petitions are dismissed.

No costs.

As a sequel to the disposal of these two writ petitions, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 1-6-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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WRIT PETITION Nos.13101 OF 2003

&

13121 OF 2003

Dated 1-6-2016

Dvs

[\[1\]](#) (2004) 8 SCC 195

[\[2\]](#) (2006) 5 SCC 764

[\[3\]](#) (2007) 5 SCC 742

[\[4\]](#) 2015 (5) SLR 284 (SC)