



62

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HIGH COURT of CHHATTISGARH, BILASPUR

Writ Petition No. 1521 of 2002

M/s Classic Umbrella Pvt. Ltd., Urla Industrial Complex, Plot No.8, Sector-A,
Raipur (CG) through Director M. L. Parakh

---- Petitioner

Versus

1. Presiding Offocer, Labour Court, Anand Nagar, Raipur, Chhattisgarh
2. (i) Smt. Rukmani Bai,
(ii) Smt. Kamla Bai,
(iii) Smt. Devki Bai,

Through : Chhattisgarh Mukti Morcha, Urla, Sarora, Raipur (CG)

---- Respondents

For Petitioner	:	Shri N. K. Vyas, Advocate
For Respondent no.1	:	Shri D. R. Minj, Govt. Advocate
For Respondent no.2	:	Shri Ashish Beck on behalf of Shri Shishir Dixit, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/08/2017

The present is a petition under Article 226 of the Constitution of India assailing the award dated 15.01.2002 passed by the Labour Court, Raipur in Case No. 120/96/ID(Ref.).

2. The petition is more than 15 years old. A perusal of the order sheet would reflect that from the last couple of hearing there has been no representation on behalf of the respondents. Considering the matter being very old, this Court decides to proceed with the matter and decide the same finally. Later on, Shri Ashish Beck, Advocate came and appeared on behalf of Respondent no.2.



3. The fact of the present case in brief is that the State Govt. had made the following reference to the Labour Court:

"Whether the termination of services of Smt. Rukmani Bai, Smt. Kamla Bai and Smt. Devki Bai was legal and valid? If not, what relief they are entitled for and what directions could be issued in this regard to the employer?"

The Union i.e. CG Chemical Mill Mazdoor Sangh which had raised the dispute filed the statement of claim bearing the thumb impression/signature of the three ladies who were involved in the dispute. In the said claim case, they have made a statement that they had worked for a considerable period of time at the petitioner's establishment and their services were terminated abruptly without compliance of the provisions of Chapter 5 of the Industrial Dispute Act (hereinafter referred as 'ID Act'). They were also not issued with any notice or salary in lieu of notice before termination. Thus, the termination being illegal, they had sought for relief of reinstatement with full consequential benefits.

4. The petitioner's establishment entered appearance before the Labour Court and submitted their written statement wherein they had categorically denied the contentions of the first party Union. In their written statement they had denied the regular employment part and also categorically denied of there being continuous employment of 240 days in a calendar year so as to attract the benefit of the provisions of Industrial Dispute Act before discontinuation of service.

5. Subsequently, when the matter was fixed for evidence, only one of the ladies among the three involved in the dispute i.e. Smt. Kamla Bai appeared before the Labour Court and made a statement. The other two ladies involved in the dispute namely Smt. Rukmani Bai and Smt. Devki Bai did not appear and lead any evidence. Finally, accepting the evidence of Smt. Kamla Bai to be in the representative capacity, the Labour Court vide its order dated 15.01.2002 allowed the application and answered the reference in favour of the worker



holding that the termination was bad in law and ordered for reinstatement with 25% back wages to all the three ladies.

6. It is this award which has been assailed by the petitioner in the present petition.

7. The contention of the counsel for the petitioner is that the witness who has been examined on behalf of the Union i.e. Smt. Kamla Bai has failed to establish that there was 240 days of continuous employment for the benefit of Chapter 5 of the ID Act to be extended. He further submits that the respondents have also failed to prove the regular nature of employment of the three ladies involved in the dispute. In addition, there was also a technical objection raised by the petitioner so far as the locus of the Union which had raised the dispute. Thus prayed for setting aside of the impugned award.

8. State counsel assisting the Court referred to the impugned judgment as well as the evidences which have come on record that of Smt. Kamla Bai and submitted that the Presiding Officer of the Labour Court has accepted the statement of Smt. Kamla Bai to be a representative capacity wherein she has categorically stated that the other two ladies i.e. Smt. Rukmani Bai and Smt. Devki Bai were also engaged by the petitioner's establishment and that they came into employment subsequent to her appointment. He further submitted that the employment part also stands admitted for the reason that the witness of the petitioner's establishment has also admitted in his cross-examination of occasionally engaging the three ladies which by itself is a strong evidence based upon which an inference should be drawn against the petitioner, therefore, the finding of the Labour Court cannot be faulted with. Thus, prayed for rejection of the writ petition.

9. Having considered the rival contentions put forth on either side and on perusal of the record what clearly reflects is that the dispute initially was raised by a Union. However, the statement of the claim shows that it is not the Union



which had filed the same but it was the three ladies involved in the dispute who had filed the statement of claim. It is also reflected that the evidence which has come on record is only that of one of the ladies involved in the dispute i.e. Smt. Kamla Bai whose services were allegedly terminated by the petitioner. The other two ladies namely Smt. Rukmani Bai and Smt. Devki Bai have not been examined neither is there any evidence of any office bearer of the Union who had raised the dispute to show that the evidence which has been adduced was in the representative capacity. Though it is not there, even otherwise it could not have been accepted as it is a case of termination of services. In a case of termination, the aggrieved person whose services stood terminated he should lead evidence to show the non compliance of the provisions of Chapter 5 of the Industrial Dispute Act both in respect of the employment as also the continuous employment of 240 days before termination. It is all the more pertinent to take note of the fact that the Labour Court in the given factual matrix has reached to the conclusion that the employment part since has been proved, there appears to have been a non compliance of Section 25F in respect of each of the ladies and therefore has held the termination to be bad.

10. This finding of the Labour Court, in the opinion of this Court, can be confined only in respect of the lady who has led her evidence before the Labour Court. It cannot be extended to the other ladies who have not led any evidence before the Labour Court. In other words, the evidence of Smt. Kamla Bai cannot be construed as an evidence in proxy to support the claim of the other persons who have not been examined at all and who had claimed for their services being illegally terminated by the petitioner employer.

11. Thus, the impugned order deserves to be and is accordingly modified to the extent that the relief so granted by the Labour Court shall be confined to the lady who has led evidence before the Labour Court i.e. Smt. Kamla Bai and the



71

5

benefit of the said order cannot be extended to the persons who have not been examined before the Labour Court.

12. Counsel for the petitioner at this juncture submits that in compliance of the provisions of Section 17B of the ID Act, they had made correspondence to the three ladies involved in the dispute but till date none have reported for duty.

13. With the aforesaid modification to the impugned order, the present writ petition stands partly allowed.

Sd/-
P. Sam Koshy
Judge

Bhola