

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 2884 of 2010**

Kishor Kumar Yadav, S/o. Jagdish Yadav, Aged about 46 years, R/o. Village Bortalab, Tahsil Dongargarh, District Rajnandgaon Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: the Secretary, Development of Forest, D.K.S. Bhawan, Mantralaya, Raipur Chhattisgarh
2. The Divisional Forest Officer, Khairagarh Division, District Rajnandgaon Chhattisgarh
3. The Assistant Circle Officer, Circle-Bortalab, Tahsil Dongargarh, District Rajnandgaon Chhattisgarh
4. Labour Court, Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Atanu Ghose, Advocate
For State	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/02/2018**

1. Present is a writ petition assailing the award dated 12.11.2009, passed by the Presiding Officer, Labour Court, Rajnandgaon, in Case No. 145/I.D.Act/Ref/2007.
2. Vide the impugned award, the Labour Court has rejected the claim application of the petitioner on the ground that the petitioner-workman has not been able to establish his continuous employment with the respondents before the Labour Court.
3. The brief facts of the case is that the petitioner was initially engaged as a Daily Wage Employee in 1985 and it is alleged that he continued in employment till 13.03.2000 when abruptly his services were discontinued. Though his services were discontinued in March,

2000, the Claimant for the first time raised a dispute in the year 2007 and the matter got referred to the State Labour Court, Rajnandgaon.

4. Either parties to the dispute entered appearance to the Labour Court and filed their statement of claim and written statement. Subsequently, the worker deposed before the Labour Court in respect of his being in employment from 1985 to March, 2000. He further stated that he was discharging the duties of a Chowkidar. However, apart from the oral statement made by the petitioner before the Labour Court there was no other piece of evidence produced by the petitioner to substantiate any of his contentions. Neither did the worker produce evidence of a co-worker who could have established the employment. Likewise, the petitioner also did not issue an application for summoning of a witness under whom he had discharged his duties. Moreover, the worker could have obtained the information under the Right to Information Act in respect of the wages that he received to prove his continuous employment, which again has not been done by the petitioner in this case.
5. It is settled position of law that when a Daily Wage Employee challenges an alleged termination order before the Labour Court, the burden is on the worker to first establish and prove the continuous employment for a period of 240 days before termination of service. Unless the worker discharges his burden, the burden could not be shifted on the other side.
6. In the instant case, the worker has not able to produce sufficient cogent evidence, with which it could be ascertained that there was a continuous employment of the petitioner with the respondents continuously before March, 2000. Moreover, no plausible and

satisfactory explanation has been given by the petitioner for not raising an industrial dispute between March, 2000 to 2007 i.e. for a period of 7 years, which again is a pretty long time for the employee to raise a dispute.

7. In the given facts and circumstances of the case, it would be relevant at this juncture to refer to the judgment of Hon'ble Supreme Court in the case of "***R.M. Yellatti v. Asstt. Executive Engineer***" reported in **(2006) 1 SCC 106**, where dealing with a similar issue the Hon'ble Supreme Court in paragraph No.17 has held as under:

"17. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the

matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.”

8. Given the facts and circumstances of the case and also keeping in view the judgment of the Hon'ble Supreme Court in the case of “R.M. Yellatti” (supra), this Court is of the opinion that the worker involved in the instant case has not discharged the burden of proving his employment with the respondents for a continuous period of 240 days before the alleged termination or discontinuous of service.
9. In the given facts and circumstances of the case, this Court does not find any strong case made out by the Claimant in calling for an interference with the finding of the Labour Court and the writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge