

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Appeal No. 759 of 2018

Sanjay Kumar Sahu S/o Shri Kuduram Sahu Aged About 49 Years R/o Irrigation,
 Rampur Korba, Police Station- Rampur, Tahsil And District- Korba, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanandi Bhawan, Naya Mantralaya, Naya Raipur, District- Raipur, Chhattisgarh.
2. Executive Engineer Through Hasdeo Baraj Jal Prabandh Division, Rampur, Korba, District- Korba, Chhattisgarh.
3. Sub Divisional Officer Through Hasdeo Barraj Jal Prabandh, Sub Division, Darri, Korba, District- Korba, Chhattisgarh.

---- Respondents

For Appellant	: Shri KPS Gandhi, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

28/11/2018

Per Ajay Kumar Tripathi, Chief Justice

1. Heard counsel for the parties.
2. The Labour Court, Korba refused to give an award in favour of the workman on a reference made under Section 10(1) of the Industrial Disputes Act, 1947 against so called disengagement of the workman.
3. The primary reason why the award on this count was refused was failure on the part of the workman to bring evidence on record that he had worked for 240 days prior to the date of his retrenchment.
4. Against the decision of the Labour Court dated 25.03.2010, writ application was preferred by the present Appellant. Here also, while examining the reference

which was negated as well as the records, the learned Single Judge did not find those evidence and material to hold that the workman had worked for 240 days in the year prior to the date of retrenchment and therefore, dismissed the writ application holding that the onus to prove so lay on the workman and in this regard, relied on a few decisions primarily of the Hon'ble Apex Court.

5. We do find that there is an omnibus statement with some document to show working, but those do not add up to the requirements of the statute showing working for the period of 240 days in the calendar year.
6. Since the writ application was dismissed, now the workman is in appeal.
7. We again pointedly raised a query before the counsel assisting us in appeal as to what is that evidence or exhibit which takes care of the infirmity in the two decisions where it has been concurrently held that the factum of having worked for 240 days has not been established. That vital piece of evidence is not emerging from the records even in appeal.
8. Since the onus is on the workman to establish working for the statutory period of 240 days in the calendar years prior to the date of retrenchment, the helplessness which has been expressed by the counsel on behalf of the workman that they are hardly given any evidence of working by an employer cannot bail him out. There are ways and means available. The workman could have made demand upon the Labour Court to compel the employer to produce evidence or records maintained in due course of business or governance, but even that was not done.
9. Since the evidence of working for 240 days is yet not made out even in appeal from the records, therefore, this Court refuses to interfere with the order either of the Labour Court or the learned Single Judge dated 31.07.2018. Appeal therefore stands dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE