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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.424 OF 2007

Mr. Ashok U. Nikam ...Petitioner

vs

Tata Power Company Ltd. ...Respondent

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Ms. Karuna Yadav, i/b. Mr. N.M. Ganguli, for the Petitioner.

Mr. K.M. Naik, Senior Advocate, a/w. Mr. Hemant Telkar, and Ms. Janaki Kadam, i/b. S.P. Salkar, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: JUNE 22, 2018

(ORAL JUDGEMENT) :

. Heard learned Counsel for the parties. This petition challenges an award passed by the Labour Court at Mumbai in a reference made to it under Section 10 of the Industrial Disputes Act. The reference was at the instance of the Petitioner workman. The impugned award has rejected the reference.

2. The Petitioner's case in his statement of claim was that he was engaged in the activity of manufacturing and supplying electric power in the Respondent establishment between 5 March 1978 and 12 June 1995. During this period, he claimed to have continuously worked with the Respondent, though the company used to give artificial breaks for denying him permanency benefits. He claimed that his services were terminated on 12 June 1995 without giving any charge-sheet or

conducting any enquiry or even following the provisions of Section 25-F of the Industrial Disputes Act. He, accordingly, claimed reinstatement in service with full back wages and continuity in service with effect from 12 June 1995. It was the case of the Respondent that the Petitioner was working intermittently during the period from 5 March 1978 to 12 June 1995 on specific projects and on specific orders of appointment and after completion of the individual projects, his services came to an end on each of these occasions. The Respondent denied continuous employment of the Petitioner as also 240 days of continuous service. The Labour Court framed issues concerning completion of 240 days continuous service as also legality of his termination on 12 June 1995. The Court held that the Petitioner was appointed on temporary basis for specific periods and that too on projects and had not completed 240 days of continuous service with the Respondent.

3. It is pertinent to note that though the Petitioner went before the Labour Court with a specific case that he was in continuous service with the Respondent establishment between 5 March 1978 to 12 June 1995, he could not show that save and except the period during which he worked on a particular project with the Respondent from 24 January 1981 to 30 April 1984 he worked for 240 days preceding twelve months prior to any of his earlier terminations. The record indicates that there were several orders of his appointment for different lengths of service. Apart from the project work mentioned above, the employments were between 9 July 1978 to 20 August 1978, 4 October 1979 to 25 December 1979, 7 December 1984 to 9 February 1985, 13 March 1985 to 9 June 1985, 27 March 1986 to 24 June 1986, 19 October 1987 to 14 January

1988, 15 April 1988 to 24 May 1988, 17 July 1991 to 11 October 1991, 17 August 1992 to 12 November 1992, 2 December 1992 to 27 February 1993 and 16 March 1995 to 12 June 1995. This evidence does not indicate continuous service of the Petitioner with the Respondent from 9 July 1978 to 12 June 1995. It rather indicates about 11 or 12 specific engagements with the Respondent. Save and except a particular period where he worked on a project, it could not be shown that the Petitioner actually worked for 240 days in twelve months preceding any of the terminations. In the premises, if it were his case that he was in fact entitled to permanency on the basis of services rendered by him either for the particular project period or otherwise, he ought to have applied for regularization and permanency. Instead what he appears to have challenged before the Industrial adjudicator is his last termination of 12 June 1995. That he challenged on the footing he was in continuous employment from 1978 till 1995. This continuous employment was not proved before the Court. In the premises, it was not good enough for the Petitioner to challenge the order of his last termination. After all the termination was in respect of his engagement with the Respondent for a period of three months from 16 March 1995 to 12 June 1995. His last engagement before that was from 2 December 1992 to 27 February 1993, i.e. more than two years prior to this last period of engagement. He never sought relief in respect of this earlier period or periods before that. He merely appears to have challenged his termination of 12 June 1995. The Labour Court was, in the premises, right in observing that there was no case of continuous service or completion of 240 days in twelve months preceding the last termination.

4. In case of a reference under Section 10 of the Industrial Disputes Act, the Labour Court is not empowered to travel beyond the terms of reference. Either it must be shown that it is a specific term of reference on which the particular relief is claimed before the Court or that consideration of such matter is incidental to the terms of reference and the reliefs claimed thereupon. Unless that is shown, the Industrial Court cannot go into the question. In this case, as I have noted above, the question whether on the date of his last termination, the employee was a permanent employee of the Respondent by virtue of any previous engagement cannot be considered as an incidental matter having regard to the terms of reference. The question to be considered by the Court was whether the employee proved 240 days of continuous service in a period of twelve months preceding his last termination.

5. Learned Counsel for the Petitioner refers to the case of **Sarita S. Melwani vs. Pallav V. Talekar**[1]. Relying on this judgment of our Court, it is submitted that the workman having established a case under Section 25-B(1) of the Industrial Disputes Act, it would not be necessary for him to prove that he had worked for 240 days as contemplated in Section 25-B(2). That was a case where the workmen concerned had worked for 17 years and 14 years, respectively. Such finding was recorded by both Courts below. Our Court held that if such service was proved, the case came under sub-section (1) of Section 25-B and it was no longer necessary for the workman to prove 240 days of continuous service under sub-section (2) of Section 25-B. In our case, far from there being any finding of any number of years of service, there

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is a finding of only intermittent or non-continuous service in several specific periods over the years. Thus, there is no case under sub-section (1) of Section 25-B. It was, thus, necessary for the employee to show that his case fell within sub-section (2) of Section 25-B and that, as noted above, he failed to establish.

6. In the premises, no fault can be found with the impugned award of the Labour Court. The petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)