

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.20157 OF 2001

ORDER:

Petitioner, who worked as a casual Man Mazdoor in the respondent-Co-operative Sugar Factory, Chodavaram, Visakhapatnam (for short 'Factory') filed this Writ Petition being aggrieved by the Award dated 09.04.2001 passed in I.D.No.120/1999 by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, wherein the relief claimed by the petitioner for reinstatement with backwages and continuity of service was dismissed.

Brief facts of the case are that the petitioner-workman was engaged as Casual Man Mazdoor in the month of December, 1985 in respondent-Factory and he was paid wages @ Rs.13.50/- per day besides other allowances. He was also paid *ex gratia* amount. While so, on 31.03.1988, the management of the Factory orally disengaged the services of the workman, without any notice or without any retrenchment compensation payable under Section 25F of the Industrial Disputes Act, 1947 (for short 'I.D.Act') and mandatory rule of 'Last Come First Go' was also not followed. Neither appointment letters nor termination letters were issued to the Casual Mazdoors. Petitioner was not re-engaged inspite of several requests. The petitioner submitted application on 02.12.1994 seeking re-engagement. The Management having received the same, did not re-engage the petitioner into service. In those circumstances, petitioner approached the Assistant Commissioner of Labour and also Deputy Commissioner of Labour, Visakhapatnam. Since the conciliation proceedings were failed,

petitioner raised Industrial Dispute in I.D.No.120/1999 invoking Section 2-A (2) of the I.D. Act before the Labour Court, Visakhapatnam, on the advice of the Assistant Commissioner of the Labour, Visakhapatnam. The Labour Court having considered the evidence adduced before it i.e. oral evidence of WW.1, WW.2 and MW.1 and MW.2 and documentary evidence of W.1 to W.3 and M.1 to M.4, came to the conclusion that the petitioner has worked intermittently for 247 days in two successive seasons in respondent-Factory during the period from November, 1985, to May, 1988 without any continuity and thereby rejected the claim of the petitioner. Questioning the same, the present writ petition came to be filed.

Sri K.Subramanyam, learned counsel for the petitioner, would contend that the petitioner worked as a Casual Man Mazdoor from November, 1985, to March, 1988, on daily wage basis @ Rs.13.50/- ps and he was illegally terminated on 31.03.1988 without paying any retrenchment compensation as required under Section 25F of the I.D. Act. Petitioner worked for 247 days preceding the date of his retrenchment. The Management of the Factory has to follow the provisions of I.D. Act. But, the Labour Court on erroneous appreciation of fact and law came to the conclusion that the petitioner worked only for 139 days immediately preceding the date of his termination. The finding of the Labour Court is perverse and not based on the evidence available before it. In support of his contention, learned counsel placed reliance on **Superintending Engineer, Priyadarshini Jurala Project, Circle No.1, Gadwal,**

Mahabubnagar District vs. Sree Ramulu¹ wherein this Court held that it is not necessary that the appointment must be through a written order or payment of wages must be in a particular form. It would be sufficient, if the employment, even made through oral orders, and payment of wages, from time to time, are proved by adducing admissible evidence.

Learned counsel for the petitioner would further contend that the petitioner worked continuously 247 days preceding the date of his termination, but the Labour Court has not decided the issue based on the evidence on record. Shifting the burden on the workman to prove that he worked 240 days is not legal, for which, he placed reliance on ***Bhavnagar Municipal Corporation vs. Jadeja Govubha Chhanubha***² wherein the Supreme Court held that xerox copies of certificate marked without any objections from the respondent cannot be faulted and strict rules of evidence are not applicable to the proceedings before the Labour Court. If the termination is proved to be illegal for non-payment of retrenchment compensation of the I.D. Act, the petitioner is entitled for reinstatement with continuity of service.

Learned counsel further contended that as the petitioner was engaged in seasonal industry, he is entitled for retaining allowance. That period has to be taken into consideration for reckoning and he is entitled for retaining allowance or any exit settlement scheme/plan or any pensionary benefits under the Exit Settlement Plan/Scheme, for which he relied on the decision of the

¹ 2013 (1) ALD 70

² (2014) 16 SCC 130

Supreme Court in ***Warsaliganj Sahkari Chini Mill Mazdoor Union vs. State of Bihar***³.

However, on careful perusal of the decision reported in ***Warsaliganj case (3 supra)*** this Court is of the view that based on the factual matrix of the said case, the Supreme Court held that the seasonal workers attached to sugar factories are entitled for payment of retaining allowance or other benefits in terms of the Exit Settlement Scheme/Plan or pensionary benefits. The judgments of the Supreme Court and this Court referred supra, are on different factual matrix. In the case on hand, the petitioner was only engaged as Casual Man Mazdoor and the petitioner has worked only for 139 days immediately preceding the date of his termination and as such the judgments relied by the learned counsel for the petitioner are of no help to the petitioner.

Per contra, the learned counsel for the respondent-Factory would contend that the petitioner worked only 247 days in two seasons, he has not worked required duration i.e. continuous period of 240 days. Hence, the provisions of I.D. Act, much less, Section 25F have no application and the petitioner is not entitled for any notice or notice pay and the oral disengagement of the worker wont come within the meaning of Section 2 (o) of the I.D. Act. The Labour Court has rightly dismissed the claim of the petitioner holding that since the petitioner worked only for 75 days in two seasons, he is not entitled for any protection as per Section 25-F of the I.D. Act and there is no irregularity or illegality in dismissing the claim of the petitioner.

³ 2015 LawSuit (SC) 130

Having considered the rival contentions of both the counsel and material on record, it is found that the petitioner was engaged as a Casual Man Mazdoor in the respondent-Factory and he was engaged in seasonal works on daily wage basis. As could be seen from Ex.M.1, letter addressed to the Assistant Commissioner of Labour, petitioner worked only for 247 days from November, 1985 to May, 1988. The petitioner being a Casual Man Mazdoor had not worked continuously required period of 240 days. Hence, the provision of Section 25-F of the I.D. Act is not applicable to the petitioner's case. Since the petitioner is not a permanent Mazdoor or seasonal worker and he is only a casual daily Mazdoor, the principle of 'Last come First Go' has no application to the petitioner's case. As per the evidence of MW.1 and Ex.M.1, petitioner worked only 247 days intermittently and not continuously during the period and 1985-88. Hence, he is not entitled for any benefits, much less, the retrenchment compensation as per Section 25-F of the I.D. Act, as rightly held by the Labour Court. On careful examination of the evidence available before it, the Labour Court also held *in spite* of existence of ban on recruitment of any type of labour in respondent-Factory since about five years, as seen from Ex.M.4, some appointments of mazdoors were made from the years 1990 to 1998. However, the appointments made were very limited and if there is any possibility for engaging the Mazdoors during the season on daily wages, the case of the petitioner shall be taken into consideration by the management of the Factory. Thus, it is evident that the Labour Court after considering all the possibilities, dismissed the claim of the petitioner. I see no perversity or irregularity in the finding of

the Labour Court. In considered view of this Court, there is no error of fact or error of law committed by the Labour Court in the award, which warrants interference of this Court under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

10th August, 2018
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