

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: December 14, 2018

+ **W.P.(C) 998/2015 & CM 6347/2018**

THE GENERAL MANAGER BANK OF BARODA Petitioner

Through: Mr.Pramod B. Agarwala and Mr.
Anuj P. Agarwala, Advocates

versus

NIMO DEVI

.....Respondent

Through: Ms. Anubha Kaushal, Advocate

+ **W.P.(C) 9788/2015**

NIMO DEVI

..... Petitioner

Through: Ms. Anubha Kaushal, Advocate

versus

BANK OF BARODA

..... Respondent

Through: Mr.Pramod B. Agarwala and Mr.
Anuj P. Agarwala, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. The above-captioned petitions are directed against Award of 25th June, 2014 vide which the Central Government Industrial Tribunal (*hereinafter referred to as 'the Tribunal'*) has drawn adverse inference against Bank of Baroda (*hereinafter referred to as 'the Bank'*) for not producing the record and has held that the termination of service of *Nimo Devi* (*hereinafter referred to as 'Workman'*) is illegal and so, direction to

reinstate workman has been passed. However, back-wages have been declined as workman had not pleaded and proved in evidence that she had remained unemployed since the date of termination of her service upto the date of Award. In the above-captioned first petition, the employer-Bank seeks setting aside of the Award whereas in the above-captioned second petition, workmen seeks full back-wages.

2. Since the Award impugned in these petition is same, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being decided by this common order.

3. The challenge to impugned Award by learned counsel for the Bank is on the ground that the Tribunal has erred in putting the burden on the Bank to prove that the Workman had worked continuously for 240 days in a year. It is submitted that the burden is on the workman to prove it. In this regard, reliance is placed upon decision of Co-ordinate Bench of this Court in *Pankaj Dixit & Ors. v. M/s. K.B.S.H. Export House & Anr.*, 248 (2018) DLT 357. It is also submitted that workman had not worked for 240 days and infact she had worked for 221 days and that workman's attendance in two branches of the Bank cannot be clubbed together and to submit so, reliance is placed upon decision in *Haryana State Cooperative Supply Marketing Federation Limited v. Sanjay*, (2009) 14 SCC 43. Thus, it is submitted that the workman is not entitled to reinstatement and her petition deserves to be dismissed.

4. On the contrary, learned counsel for the Workman submits that since the Bank had not produced the record and so, adverse inference has been rightly drawn by the Tribunal against the Bank. It is submitted on

behalf of workman that the Bank has failed to prove that the workman was gainfully employed elsewhere and so, workman is entitled to full back-wages.

5. Upon hearing and on perusal of impugned Award, material on record and the decisions cited, I find that initially the burden to prove that workman has continuously worked for 240 days with the employer-Bank in a given year preceding the date of alleged termination is on the workman, but once the workman steps into the witness box and asserts that he/she has worked continuously for 240 days in a year, then the burden stands discharged and it is for the employer-Bank to produce the record to controvert the assertion of workman having continuously worked for more than 240 days in a year. In this regard, the pertinent observations made by a Co-ordinate Bench of this Court in *Dhara v. Presiding Officer & Anr*, 2007 SCC OnLine Del 431 are as under: -

“A bare perusal of the extract of the judgment produced hereinabove show that although the burden to prove 240 days of service lies on the workman and this burden is discharged upon workman stepping into witness box and adducing cogent evidence on oath or affidavit, yet there is a caveat attached to the effect that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of burden placed by law on the workman.”

6. Similar view has been taken by another Co-ordinate Bench of this Court in *Pankaj Dixit (supra)*. Reliance placed by learned counsel for the

Bank upon decision in *Sanjay (supra)* is of no assistance to the case in hand, as the workman has categorically asserted in her evidence that she had worked in the Bank from June, 1997 till 19th April, 1999 i.e. the day when her services were illegally terminated by the Branch Manager of Rampura Branch of the Bank. Once the burden to prove shifts upon the employer, then it is for the employer-Bank to negate workman's positive assertion of having worked for more than 240 days in a year. Upon scrutiny of the evidence on record, it becomes clear that petitioner's witness (*MW-I*) had not produced the original vouchers to show as to for how many days, the workman had worked with the Bank. It is matter of record that Attendance Register, which is the best evidence, has not been produced by the Bank to dislodge workman's evidence of having continuously worked for more than 240 days in a year.

7. In light of aforesaid, I find that in the impugned Award, the Tribunal has rightly concluded that the documentary evidence, which was in possession of the employer-Bank, has not been produced and so, adverse inference against employer-Bank has been aptly drawn by the Tribunal. In the considered opinion of this Court, finding in the impugned Award of the workman's termination being illegal, is wholly justified. Hence, petition filed by employer-Bank is hereby dismissed.

8. So far as petition preferred by the workman is concerned, I find that workman has failed to plead and prove that she had remained unemployed from the date of her termination upto the date of Award and so, the Tribunal has rightly concluded that workman is not entitled to back-wages. Consequentially, I find that the impugned Award suffers

from no illegality or infirmity and is hence maintained. The writ petitions filed by the Bank and the workman are hereby dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 14, 2018

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