

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9165 OF 2004

Mr. Dagadu Tukaram Kamble ... Petitioner

Versus

The Chief Executive Officer

Zilla Parishad, Solapur

And Another ... Respondents

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Mr. Ameva Tamhane a/w Ms. Seema Sarnaik for the Petitioner.

None for the Respondents.

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CORAM : S.C. GUPTE, J.

DATE : 10 DECEMBER 2019

P. C. :

Heard learned Counsel for the Petitioner. The writ petition challenges an order passed by the Industrial Court at Solapur in a revision arising out of an order passed by the Labour Court at Solapur on a complaint of unfair labour practice.

2 The complainant before the Labour Court, who is the Petitioner here, was in the employment of Respondent No.2 Zilha Parishad. He was a daily wager, designated as a Mazoor, and worked with Respondent No.2 intermittently from 1 June 1979 to 8 October 1987. He claimed to have rendered continuous service by completing more than 240 days in each year. He claimed that he was unlawfully terminated without giving notice and on a false pretext. The

complaint was opposed by the Respondent-employer. It was contended on behalf of the Respondent that the complainant was provided work as per availability of work and had rendered services from 24 May 1983 to 23 June 1985 and 5 August 1986 to 10 August 1986 and had, accordingly, not completed more than 240 days in any given year. The Respondent denied the contents of the complaint and put the complainant to their strict proof.

3 It appears that the complainant's case was originally dismissed for default. On 23 February 1999, he applied for restoration. It appears that much later, in the course of hearing of the complaint, i.e. on or about 26 May 1998, the complainant applied for documents for the years 1979 to 1987. The Respondent-Zilha Parishad expressed its inability to produce the documents. It was the case of the Respondent that as a matter of practice, documents were destroyed by it after five years. The Labour Court, however, came to a conclusion that admittedly the complaint had been filed in the year 1987 challenging the termination of the complainant's service on and from 8 October 1987. The court observed that this meant that the Respondent was very much aware and having knowledge of pendency of the present complaint and ought to have maintained the relevant documents till the final disposal of the complaint; since the documents were destroyed, the Respondent's case that the complainant employee had worked with them only during the stated periods was without any support and could not be treated as authentic or genuine. The court was, therefore, of the view that the date of termination mentioned by

the complainant and the length of service alleged to have been rendered by him had to be believed. The revisional court, in its impugned order, observed that the original complainant had applied for documents only on 26 May 1998; the requisition was for the years from 1979 to 1987. The revisional court found the Respondent's case that the documents were destroyed in due course, since it did not maintain documents beyond five years, to be reasonable and acceptable. In these circumstances, the revisional court was of the view that the labour court could not have drawn an adverse inference, when the documents were destroyed; it could not assume, in the premises, that the original complainant had worked continuously for more than 240 days in any given year.

4 No infirmity can be found with the impugned order of the revisional court. It was the complainant employee who went before the court and whose case was that he had worked continuously for a period of 240 days in a year. If that was so, the onus essentially lay on him to prove such case. One can understand that the employee in a case like this would be inconvenienced, if, as a daily wager, he was asked to submit documentary evidence in support of days of service rendered by him. But then nothing prevented him from applying for production of these documents earlier. The requisition for production was made for the first time on 26 May 1998 for documents pertaining to the years 1979 to 1987. The Respondent Zilha Parishad was not expected to hold on to the documents indefinitely, considering particularly that as a matter of practice it maintains records only for

five years. Under these circumstances, drawing of any adverse inference against the Zilha Parishad and accepting the complainant employee's case on his bare oral statement that he had worked for requisite number of days during the concerned periods, clearly amounted to an error apparent on the face of the record. Accordingly, it called for an order setting it aside from the revisional court. The impugned order of the revisional court, thus, cannot be interfered with under Articles 226 or 227 of the Constitution of India.

5 Accordingly, there is no merit in the petition. The writ petition is dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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by Rajesh V.
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