

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8856 OF 2017

Shivlingappa H. Roli .. Petitioner.

Vs.

Sr.Divisional Manager,
IBP Company Ltd. & Anr. .. Respondents.

Mr.A.S.Rao for the Petitioner.

Mr.K.P. Anilkumar with Ms.Priyanka Kumar for the Respondent No.2.

CORAM : A.K. MENON, J.

DATED : 6TH MARCH, 2019

P.C. :

1. The challenge in the petition is to the award dated 11th March, 2016 passed by the Industrial Court in Reference (IT) No.6 of 2007 whereby the Reference was answered in the affirmative confirming that the termination of services of the petitioner was legal and justified.

2. The facts in brief are as follows : The petitioner contends that he was employed with IBP Co. Ltd. as helper in the year 1990 on monthly wages of Rs.6,000/-. The employer was engaged in the business of distributing petroleum products. It was contention of the petitioner that during his employment he was not getting wages and other benefits as

permanent employees were granted. The petitioner was harassed during the course of his employment. While on duty a tanker truck on which the petitioner was working met with an accident. The petitioner suffered injuries but no compensation was paid to him. On the contrary he was removed from service without complying with the provisions of law.

3. The petitioner claims that he has worked continuously for more than 240 days in a year yet he was not given any benefits of permanent employees. He was not reinstated on the contrary he was deprived of continuity of service and backwages. He has further contended that he tried to secure employment elsewhere but could not get any employment. I may mention here that at initial stage when the complaint was heard the Tribunal allowed the Reference vide award dated 17th July, 2013 but that order was exparte since the respondent was not represented. It is not in dispute that the respondents filed Writ Petition No.10178 of 2014 which came to be disposed by the order dated 15th July, 2015. The High Court set aside the order of the Industrial Tribunal and directed that the respondent be given an opportunity to defend the case.

4. Upon remand, the parties led evidence and the hearing on remand has led to the present award. The Tribunal framed three substantial issues. Firstly, whether the petitioner had been in the continuous employment since

1990 as a helper upto 27th May, 2000 and had completed 240 days continuous service in a calendar year. Secondly, whether the petitioner's services were terminated on 27th May, 2000 without following due process of law and thirdly, whether the petitioner is entitled to be reinstated with continuity of service and full back wages. All the issues have been answered in the negative against the petitioner.

5. Mr.Rao, learned counsel for the petitioner submitted that decision of the Industrial Court upon remand is perverse. That the petitioner was employed from 1990 by IBP Company Ltd. who were predecessor of the present respondent. The Industrial Court had relied upon evidence led by the respondent and in particular placed reliance upon internal communications produced by the respondent's witness Mr.Prakash Kumar Srivastava in the course of further examination in chief. In examination in chief there was no mention of a particular letter dated 20th November, 2000 Exhibit C-15. This document was introduced in further examination in chief on 2nd March, 2016 that too a photocopy was produced for the reason that the original was sent to the respondent's witness and that it bore the signature of the Divisional Manager. A suggestion put to the witness that the letter of 2nd December, 2002 is "false" has been denied. Mr.Rao submitted that no reliance could have been placed on the document especially since the document in question was a photocopy of an internal office communication

from A.M Loni, to Senior Manager (P&A), MRO Mumbai to Senior Divisional Manager, Pune Divisional Office. It was not a communication that originated from the present respondent but that of the predecessor in title. This document it was submitted by Mr.Rao could not have been introduced in evidence and no reliance could be placed. He therefore submitted that impugned order suffers from perversity especially since the witness was not even author of the document. It was further submitted that the respondent was called upon to produce documents pertaining to attendance of the petitioner such as muster roll etc but these documents were not produced. He, therefore, submitted that the order was passed without any application of mind and by relying on documents which have not been proved in accordance with law. He submitted that an adverse inference should also be drawn as contended by the petitioner before the Trial Court and has relied upon the decision to that effect.

6. On behalf of the respondent, the petition is opposed by Mr.Anilkumar who has supported the impugned order on the basis that no evidence whatsoever is forthcoming from the petitioner as to his employment. He submitted that the impugned order does not call for interference.

7. I have heard learned counsel for the parties at length and perused

the record including the affidavit of evidence filed by the petitioner and on behalf of the respondent by Mr.Srivastava. Although it cannot be disputed that what was produced before the Lower Court was a photocopy of the document which records number of days for which the petitioner was believed to be engaged from September 1994 to May 2000. It is to be seen whether the petitioner has himself adduced any evidence of his employment and to that effect Mr.Rao relied upon affidavit in lieu of examination in chief dated 18th February, 2016 a copy of which Exhibit U-6 filed in Reference in support of the challenge. The affidavit does not contain any assertion of manner of his engagement from 1990. Save and except for a bald statement that he was engaged in the year 1990 as a helper and that he was paid Rs.6,000/- per month, there is no attempt made by the petitioner to establish the fact that he had rendered services for 240 days continuously in a year.

8. IBP company Ltd.-the original employer was taken over sometime in the year 2007. Thus the present respondent would be expected to be in possession of record but in view of the fact that engagement of the petitioner was said to be about 17 years prior to respondent no.2 having taken over IBP Co. Ltd. It was incumbent upon the petitioner to bring forward all evidence at his command especially on remand. The petitioner was aware of the fact that the respondent company was opposing the reference.

In this behalf the petitioner has miserably failed to lead any evidence to establish the fact that he was employed since 1990. No particulars whatsoever has been provided by him in his affidavit of evidence nor any document produced. Even assuming that he was not in possession of documents, the least that could have been done is that the affidavit could have narrated details from time to time, however, no such effort is seen to have been made.

9. The fact that the respondent did not produce records cannot enure to the benefit of the petitioner who would be obliged to disclose particulars of the employment especially given the fact that the respondent in its current avatar had not engaged the petitioner. Although this Court is not required to re-appreciate evidence, the Industrial Court has considered all these aspects and has come to the conclusion that the petitioner has failed to establish completion of 240 days continuous service in relevant year and fact that the petitioner's services were illegally discontinued.

10. In *Range Forest Officer vs. S.T.Hadimani 2002 I CLR 922* the Supreme Court while disposing of Civil Appeal No.1283 of 2002 has observed if a workman's claim to have completed 240 days was denied by the employer, it would be for the workman to lead evidence that he had worked for 240 days in a calendar year and merely filing an affidavit is not

sufficient. In Range Forest Officer (supra) the respondent had not filed any proof of receipt of salary or any order or record of appointment or engagement for the said period and it is on that ground that the award had been set aside.

11. I find nothing perverse or illegal about the award at hand. The award was passed after considering the evidence and submissions made before the Court. In my view challenge cannot succeed and no interference is called for. I therefore pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON,J.)