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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELATE JURISDICTION

WRIT PETITION NO. 12258 OF 2017

Minanath Khandu Kanade ... Petitioner

vs.

D.G.P. Hinoday Industry Ltd. ... Respondent

Mr. Shailesh Kashinath More for the Petitioner.

Mr. Dhananjay J. Bhanage for the Respondent.

CORAM : A. K. MENON, J.

DATE : 4th MARCH, 2019

P.C. :

1. This petition challenges an award dated 17th July, 2014 passed by the 4th Labour Court, Pune in Reference (IDA) No. 9 of 2002 made at the instance of the petitioner and which came to be answered in the negative.

The facts in brief leading to the present petition are as follows :

2. The petitioner is believed to have joined respondent company on or about 12th December, 1995 as a “helper” and claims to have worked for more than 240 days continuously in the year 1996 and 1997 and therefore deemed to be a permanent employee. According to the petitioner he has worked in H.F. Department and Power Ferrite Department on various dates and during the period of employment he was given certain breaks, intentionally, to avoid

granting permanency. The petitioner was required to meet production targets at par with permanent employees. In the year 1996 he claims to have completed 287 days of continuous service and in the year 1997, 243 days. However, the petitioner's services were orally terminated. No Show Cause Notice was issued to him, no inquiry was held nor he was offered a notice.

3. He claims that his services were terminated illegally. He demanded reinstatement with full back wages and consequential benefits. That the appropriate Government referred the matter for adjudication under Reference (IDA) No. 9 of 2002. In the course of the hearing the petitioner claims that he had called upon the respondent company to produce certain documents such as muster rolls from January, 1995 to December, 1997 which would also reveal the seniority-cum-waiting list of regular employees, but these were not furnished and respondent-company contended that the burden of proof lay on the petitioner. That written submissions were file, both parties were heard and the award answered the issue in the negative against the petitioner.

4. Mr. More, learned Advocate for the petitioner submitted that the petitioner was engaged for years together. To ensure that he is not granted permanency official breaks of 4 to 5 days were given. Although there is no material to show that he is continued in service by the company, the respondent company was bound to follow Model Standing Orders and provisions of section 25F and 25G of the Industrial Disputes Act, 1947. The

respondent company failed to produce documents despite notice for production of documents. These documents were still in the custody of the company and therefore an adverse inference must be drawn. Mr. More also contended that there are several vacant posts which were available. Given the fact that artificial breaks were given, the reference should have been answered in the affirmative. He reiterated that the Labour Court ought to have drawn an adverse inference for non production of muster rolls and documents.

5. Mr. Bhanage submitted that the claim under the said reference was belated since services were not continued after 1997. He further submitted that the company had at all times maintained that he was a temporary hand and had no right to continuity of employment. That the Industrial Dispute so arose on expiry of his temporary tenure on 31st October, 1997. The petitioner was never appointed as permanent employee and had no right in law and further the petitioner had suppressed the correct facts. Engagement of the petitioner is stated to be only as temporary measure on account of increase in work and as additional help. In the circumstances provision of section 25(F), 25(G) and 25(H) are not attracted and there was no question of 'terminating' the services of the petitioner. He submitted that the company has been in business for a long time, enjoys a good reputation as a professional organisation. There is no question of malafides. The manpower requirement it was contended are always maintained at viable levels and therefore the respondent did not employ persons in excess of what was required. The job

was not of a perennial in nature and the end of the term petitioner's services came to an end.

6. Mr. Bhanage relied upon decision of the Supreme Court in the case of *Kishna Bhagya Jala Nigam Ltd. Vs Mohammed Rafi [2009 (8) JT JT 200]* and submitted that where a person has worked for 240 days initially the burden of proof was on the workman and not on the management. A mere statement will not suffice and non-production of muster roll per se without any plea of suppression by the workman will not be a ground for the tribunal to draw an adverse inference. He therefore submitted that there is no case for interference

7. I have heard learned counsel for the parties at some length and have perused the impugned order and the order dated 12th January, 2006 at Exhibit 24 seeking production of muster rolls. I have taken note of the fact that the parties had led evidence before the Labour Court. The petitioner admitted that he was not engaged by the respondent company. He had not made any application nor was he called for any written examination or interview. No such process had to be followed. He also had no knowledge regarding production in the year 1995 to 2000 nor did he have any information about permanent employees of the company. In relation to manpower, he has admitted that although he had claimed he had proof to show he had been working he had not produced any such evidence in Court. He was also not in a position to produce any documents to prove his appointment on

11th December, 1995. He has admitted to engaging in agricultural activities at his self owned agricultural property since October 1997 till date of deposing which was on 11th September, 2012. All this has been taken into consideration. The respondent had also led evidence of Ulhas Gopaldas Shah who has been employed in the respondent company since 1985. His evidence supported the view of the management that the petitioner was never treated as permanent employee and was engaged as a temporary measure.

8. The impugned order framed two substantial issues namely whether the petitioner services have been terminated illegally and whether the petitioner is entitled to the reliefs claimed. Both were answered in the negative. The impugned order records the various contentions of the parties and considered the evidence raised by the counsel for the parties and inter alia holds that although respondent had not filed the documents that they were directed to produce on 17th September, 2007, the non production of these documents is not sufficient to draw an adverse inference since the initial burden was upon the petitioner to prove his case and of which there was no evidence. It is on this basis that the impugned order came to be passed.

9. Once the Court was satisfied that there is no iota of evidence that the petitioner had worked for 240 days continuously there was no occasion to grant any relief. In my view, the delay in approaching the Court is also a telling factor. On a query from the Court as to why, from 1997 no steps were

taken to seek permanency and why after 2014 the petition was filed only on 22Nd August, 2016, Mr. More submitted that after the impugned order was passed the petitioner was in shock and had also undergone surgery and is now fit to resume duties. and there were some financial difficulties. These are contentions which were are not even pleaded or urged.

10. In any event the delay from 1997 to 2016 has not been explained satisfactorily. It appears that the attempt of the petitioner is only by way of after thought. In my view the impugned order cannot be faulted. No interference is called for in the Writ Jurisdiction of this Court. I therefore pass the following order :

- (i) Writ Petition dismissed.
- (ii) No costs.

(A.K. MENON,J.)