

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

WRIT PETITION (ST.) NO. 1896 OF 2020

Ankita Industries & Anr. Petitioners
vs
Ramashray Mulchand Singh & Anr. Respondents

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Hafeezur Rahman for the Petitioners.
Abhay Damle i/b Tushar Kale for Respondent No.1.

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CORAM : S.C. GUPTA, J.
DATED : FEBRUARY 20, 2020

P.C. :

Heard learned Counsel for the parties.

2. This Writ Petition challenges an award passed by the Labour Court at Thane on a reference made to it under the Industrial Disputes Act.

3. The subject matter of the reference concerned the demand of Respondent No.1 (original second party) for reinstatement in service with full back-wages and continuity of service. The second party was employed with Petitioner No.1 (original first party) since August, 2008 and worked for about three years. He was paid daily wages. It was the case of the second party that he had completed 240 days of continuous service in each of the preceding 12 months' periods. The grievance of the second party,

however, was that he had not been issued any leave card or wage slip. He claimed to be a skilled welder; his grievance before the reference court was that since he had demanded higher wages as also overtime wages, as a skilled welder, the first party was annoyed and had refused to allow him to resume the duties and informed him that his services were no more required; the first party had neither given any notice nor notice pay or offered any retrenchment compensation. It was also submitted that the first party had not maintained any seniority list and that the termination of the second party was accordingly illegal.

4. The Labour Court came to a conclusion that since the second party had examined himself before the Court and reiterated in his evidence that he was working for three years continuously with the first party and had completed 240 days in each preceding year, the burden really shifted on to the latter. The first party had stated through its witness (in his cross-examination) that the first party was maintaining a muster register and its copy could be produced before the Court, but no muster register was produced before the Court by the first party. Considering that it was an admitted fact that the first party had not issued any appointment letter to the second party or any wage slip, the second party had really no document with him to show the length of his service; these documents, if at all, would be with the first party employer and it was the latter's duty to produce them in support of its case. After

considering the case law cited before it, the Court was of the view that the first party not having filed any document before the Court in support of employment of the second party and, on the other hand, having admitted employer-employee relationship between the two in its pleadings, an adverse inference had to be drawn by the Court. The Labour Court accordingly, concluded that the second party had completed 240 days in each preceding year for three years continuously and, in the premises, for termination of his service, the procedure prescribed in Sections 25F and 25G was applicable. No infirmity can be found with either the approach of the Court or the conclusion it arrived at on the basis of evidence placed before it.

5. Learned Counsel for the Petitioner relies on the case of *Range Forest Officer Vs. S.T. Hadimani*¹. In that case, the Supreme Court held that in a case where the issue concerned was whether or not the applicant workman had completed 240 days of service in a preceding year, if the claim was denied by the employer, it was for the workman to lead evidence to show that he had in fact so worked. The Supreme Court in that case found that no proof of receipt of salary or wages for 240 days or letter of appointment or engagement for the period was produced by the workman. The facts of our case, however, are clearly distinguishable. In our case, there was, admittedly, an employer-employee relationship between the parties; the employee had been appointed more than 3 years back;

¹ (2000)3 SCC 25

admittedly, no appointment letter was issued to him; so also, it was the employee's case that no salary slip, leave card etc. were issued to him. On the other hand, it was the employer's case that the workman had not worked for the days alleged by him and this could have been proved by producing the attendance register or muster. The employer did admit that the muster register was maintained by the employer and could be produced before the Court. The evidence, in the premises, does suggest that, in the present case, proof of service was practically available only with the employer, which he, despite having an opportunity, did not produce before the Court. Considering that the second party in the present case was a mere daily wager, it was indeed reasonable to consider that there would be no proof of his appointment or payment of wages and, in any event, if there was any such proof, it was for the employer to produce the same. The adverse influence drawn by the Court is, thus, justified.

6. Learned Counsel for the Petitioner submits that it was also the case of the first party employer that the second party had abandoned the services on his own; that despite a communication to him to resume the duties, he had failed to report on duties. Learned Counsel submits that the first party employer wanted to lead further evidence before the Labour Court in this behalf but that was not allowed by the Court. From the record available before this Court, it appears that an application was indeed made on 19 December, 2017 for production of two additional witnesses and an adjournment was

sought on that basis. The Court was not inclined to grant any adjournment and asked the first party to instead proceed with the matter. On the next date, i.e. 5 March, 2018, the application was not pressed by the first party employer, but, as is indicated by the record (C-21), some ESIC record was sought to be produced as additional evidence and opportunity was sought to re-examine the complainant; there was no reiteration of the original request for examination of two additional witnesses. It is submitted at the hearing of the petition that the ESIC record would have shown that the second party's name did not figure in that record. Creation of ESIC record is a unilateral affair so far as the employer is concerned. The first party cannot rely on its own statement as a substantive piece of evidence. So far as the purported re-examination of the complainant is concerned, the first party obviously could not have re-examined the complainant. There is, accordingly, no merit even in this contention.

7. In any event, in the peculiar facts of the case, the labour court, though it accepted the workman's case, has not awarded reinstatement or back-wages to the workman, but only a lump sum compensation. As we have seen above, it does not need any interference under the writ jurisdiction of this Court.

8. Accordingly, there is no merit in the Writ Petition. The Writ Petition is dismissed.

(S.C. GUPTE, J.)