

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 5224 of 2016

Umakant Shete Vs. Deputy Engineer Z.P. Works Sub Div. Washim & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vijaykumar Paliwal, Advocate for the petitioner
Mr. K.S. Malokar, Advocate for the respondents No.1 and 2.

CORAM : MANISH PITALE, J.

DATED : JANUARY 16, 2020

By this writ petition, the petitioner has challenged concurrent orders passed by the Labour Court and Industrial Court, whereby grievance raised by the petitioner regarding alleged illegal termination of service and claiming relief of reinstatement with back wages, has been rejected.

2. According to the petitioner, he started working as Mail-Coolie on 05/05/1983, with the respondents. It is claimed that on 21/01/1987, his service was illegally terminated and that during the said period he had worked for more than 240 days in calendar year with the respondent No.1. On this basis, relief was sought of setting aside of order of termination of service with reinstatement with full back wages. It is significant that the complaint was filed on 21/11/1994, while the alleged termination of

service was said to have taken place on 21/01/1987.

3. The respondent denied the claims made by the petitioner in the complaint regarding continuous employment for more than 240 days in the calendar years 1983 to 1987. It was conceded that the petitioner had worked intermittently on daily wages with the respondent.

4. The petitioner moved an application in the proceeding pending before the Labour Court for direction to the respondents to produce muster roll, pay slips and seniority list and on the said application, an order dated 02/08/2011, was passed directing the respondent to produce the said documents. It is an admitted position on record that the said documents were not produced by the respondent.

5. The parties led their evidence in terms of their respective claims. On 02/08/2011, the Labour Court passed its judgment and order dismissing the complaint filed by the petitioner. It was found that the petitioner had failed to produce any evidence in support of his claim of having worked continuously for more than 240 days in a year since 1983, till termination of his service in the year 1987.

6. Aggrieved by the same, the petitioner filed Revision Application before the Industrial Court. The

said Revision Application was dismissed by the Industrial Court by judgment and order dated 03/02/2016, agreeing with the findings rendered by the Labour Court.

7. The learned counsel appearing for the petitioner submitted that since the respondents had failed to produce the said documents despite specific order passed by the Labour Court, an adverse inference was required to be drawn against the respondent and relief ought to have been granted in favour of the petitioner. It was submitted that oral evidence on record demonstrates that the petitioner had been able to prove his case and, therefore, the two Courts below had erred in rejecting the contentions raised behalf of the petitioner.

8. The learned counsel appearing for the respondents submitted that merely because the respondents had failed to produce the said documents, it could not be held that the petitioner had proved that he had continued in service since 1983 and that he had completed 240 days of service in a year. It was submitted that apart from examining himself, the petitioner had not produced any other witness in support of his contention and that, therefore, no interference was warranted in the impugned orders passed by the Courts below.

9. Heard learned counsel for rival parties and perused the material on record. Emphasis of the arguments made on behalf of the petitioner in the present case is that the respondents failed to produce the said documents specifically directed by the Labour Court to be produced before it. The question is whether mere failure on the part of the respondents in producing those documents would lead to the only conclusion that the petitioner had been able to prove that he put in 240 days of service since in a year 1983, till his service was terminated in the year 1987. In the face of defence taken by the respondent in written statement, the burden was on the petitioner to have placed on record positive evidence to prove his claims. The petitioner only examined himself as witness and other than his bald oral statements there was nothing to show that he had indeed worked with the respondents continuously for more than 240 days in a year since 1983, till termination of his service on 21/01/1987.

10. It was claimed by the learned counsel appearing for the petitioner that the witness, who had appeared for the respondents had given admissions in favour of the petitioner. But, a perusal of the evidence of the witness, who deposed on behalf of the respondents, shows that it was specifically stated that the petitioner was only intermittently engaged on daily wages as and when work was available and that he did

not work with the respondents for more than 240 days in a year. It was also stated that the nature of work was not perennial. Thus, it becomes clear that apart from claims made in the complaint and oral evidence of the petitioner there was lack of evidence on record to prove the claims made on his behalf. In such circumstances, relief could not be granted to the petitioner merely by drawing inference against the respondents for having failed to produce the aforesaid documents despite direction given by the Labour Court. The petitioner was required to produce at least some evidence on record in the form of examining some other witness, like a co-worker, who could have supported the claim made by the petitioner in the complaint. In absence of such material before the Courts below, it cannot be said that the findings rendered against the petitioner are erroneous.

11. Another significant aspect of the present case is that while the petitioner claimed that his service was illegally terminated on 21/01/1987, he approached the Labour Court by filing complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, only on 21/01/1994, which was more than seven years from the alleged illegal termination of service. This further indicates that the petitioner was unable to make out a case in his favour before the Labour Court and, therefore, no error could be

attributed to the impugned orders passed by the Labour Court and the Industrial Court.

12. In view of above, the writ petition is dismissed.

JUDGE

MP Deshpande