

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

WRIT PETITION NO. 4155 OF 2017

Pandurang Babarao Yesankar ___ Vs. ___ Executive Engineer, Uppar Wardha and anr

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

Court's or Judge's orders

Mr. A.S.Dhore, Advocate for petitioner
Mr.M.A.Kadu, Advocate for respondent No. 1

CORAM : AVINASH G. GHAROTE, J.
DATE : 22/02/2023

1] Heard Mr. Dhore, learned counsel for the petitioner and Mr. Kadu, learned counsel for the respondent no.1.

2] It is not in dispute that in the proceedings under Section 10 (1) read with Section 12(5) of the Industrial Disputes Act, the respondent did not enter into the witness box at all, which is evident from para 7 of the impugned judgment (pg.12), which records this position, as a closure pursis at Exh. 27 was filed by the respondent, without examining any witness.

3] In spite of this position, the learned Industrial Court while rejecting the reference has relied upon the muster roll, cash book, payment voucher and service book of the petitioner, which are

claimed to have been placed on record by the respondent. When there was no person examined on behalf of the respondent, it was impermissible for the learned Industrial Court to have taken into consideration those documents for negating the reference.

4] Mr. Dhore, learned counsel of the petitioner is correct in relying upon **M/s Bareilly Electricity Supply Co. Ltd. vrs. The Workmen and others, AIR 1972 SCC 330** (para 14), which holds that even though the Evidence Act is strictly not appreciable to the proceedings under the Industrial Disputes Act, it is inconceivable that the Tribunal could act on what is not evidence, nor can it justify its award on copies of documents, when the originals which were in existence, were not produced and proved by one of the method, either by affidavit or by witness who have executed them, if they are alive and can be produced, which would amply indicate that even in proceedings in reference before the Tribunal, the documents placed on record need to be proved by examining the witnesses, as indicated above. Since this has not been done, the impugned award passed by the learned Industrial Court dated 17.3.2015 (pg.9) cannot be sustained

and is hereby quashed and set aside and the matter is remitted back to the Tribunal to decide the same afresh.

5] The petition is allowed in above terms.
No costs.

JUDGE

Rvjalit