

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

Writ Petition No.6780 of 2018

The Divisional Controller MSRTC, Bhandara Division, Bhandara
Vs
Ghanshyam S/O Ghoddas Tandekar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.H. Kedar, Advocate for the Petitioner/s
Shri D.C.R. Mishra, Advocate for the respondent

CORAM : ANIL S. KILOR, J.
DATED : 01.08.2023

1. Heard.
2. In the present writ petition, the judgment and award passed by the learned Labour Court, Bhandara dated 14.03.2017, answering reference in the affirmative and thereby, directing party No.1 to reinstate party No.2 on his former post with continuity of service and pay full back-wages from the date of termination of the respondent, is under challenge.
3. The respondent was terminated by the petitioner-corporation, whereupon, a Conciliation Proceeding was filed by the petitioner. Thereafter, a reference was sent by the Additional Commissioner (Labour), Nagpur for adjudicating the dispute between the petitioner and the respondent on the point, whether the services of the respondent have been illegally terminated, and whether the respondent is entitled for reinstatement with continuity of service and full back-wages w.e.f. November-2007.

4. It is case of the respondent that, he is a 'Workman' and the petitioner is an employer. Due to shortage of regular employees in the category of class-III and IV, particularly Helper, Sweeper, Driver and Conductor, the employees on daily-wages were engaged and they were continued years together. It is further case of the respondent that he was working as Cleaner/Sweeper on daily-wages since March 1985 at Tumsar Depot for cleaning and sweeping of depot and bus stand. The respondent was not regularized after completion of 240 days service in a calendar year as per the Model Standing Orders applicable to the State of Maharashtra.

5. It is the case of the respondent that the petitioner maintained the attendance of the respondent by keeping Shift Diary at Depot Workshop and at Bus Stand in the separate register. In addition to the same, vouchers were prepared and payments were made by the petitioner.

6. The respondent was orally terminated and engaged new persons on regular employment and therefore, the representation was made to the Divisional Controller on 03.05.2008 and also made a representation under Section 2-A of the Industrial Disputes Act, 1947 before the Labour Officer, Tumsar by grievance letter dated 30.06.2009. Further the representation was also made on 06.08.2009 in the office of Labour Officer as well as in the office of Divisional Controller but on failure to comply with the same, the Conciliation Proceeding was filed.

7. The learned Labour Court after examining the oral as well as documentary evidence answered the reference in affirmative,

directing the petitioner to reinstate the respondent on his formal post with continuity of service along with full back-wages from November-2007 vide award dated 14.03.2017. Hence, this petition.

8. I have heard the learned counsel for the respective parties.

9. The learned counsel for the petitioner submits that the respondent has failed to establish the fact that he worked for 240 days in a preceding year and in absence of any such evidence, answering the award in affirmative and directing the petitioner to reinstate the respondent, is contrary to law. For this purpose, he has placed reliance upon the judgments of the Co-ordinate Bench of this Court in the following cases :

(i) Writ Petition No.166 of 2005 (*Maharashtra State Road Transport Corpn, Vs. The Hon'ble Member and anr*, decided on 21 & 23.04.2009); (ii) Writ Petition No.128 of 2020 (*Divisional Controller Vs. Rambhau Mahadeo Agarkar*, decided on 17.01.2023); (iii) *Raghunath Vs. Divisional Controller*, reported in 2016(2) Mh. L.J. 477; (iv) *Pradeep Vs. Divisional Controller, MSRTC*, reported in [2019(2) Mh.L.J. 82]; and (v) Writ Petition No.1747 of 2023 (*Pralhad Ganapatrao Bharad Vs. Divisional Controller*, decided on 05.06.2023)

10. The learned counsel for the petitioner further submits that there was a delay in filing the Conciliation Proceeding and said point was not considered by the learned Labour Court in right

perspective. He therefore, submits that the direction to reinstate the respondent, is erroneous.

11. The learned counsel for the petitioner points out that, the learned Labour Court has shifted the burden on the petitioner to prove that the respondent did not work for 240 days in the preceding year. Whereas, the burden lies on the employee to prove the said fact and shifting of burden on the employer by the learned Labour Court, is erroneous. He accordingly, prays for quashing and setting aside the award by allowing the present petition.

12. The learned counsel for the respondent/employee submits that to establish the fact that, the respondent worked for 240 days in the preceding year, the record was called but the petitioner failed to produce it before the learned Labour Court.

13. It is submitted that the petitioner recorded the attendance of the respondent in the Shift Diary maintained at Depot Workshop by Head Art and Traffic Controller and at Bus Stand in the separate register. He further submits that the vouchers were prepared for payment and though those documents were called by the learned Labour Court, they were not produced. He therefore, submits that it cannot be said that the respondent did not prove the fact that he worked for 240 days in the preceding year.

14. It is submitted that the evidence of the witness of the petitioner supports the case of the respondent that, the respondent was working as Cleaner/Sweeper since 1985 at

Tumsar Depot. He accordingly, submits that no illegality has been committed by the learned Labour Court in answering the award in affirmative. He therefore, prays for dismissal of the writ petition.

15. In light of the rival contentions of the parties, I have perused the record and the impugned order.

16. The learned Labour Court, while dealing with the issue as regards the delay, has observed that the respondent orally requested to the petitioner to reinstate him and for that, he made the representations dated 03.04.2008 and 17.10.2008 and also made the application dated 25.1.2009 to the Divisional Controller. The Court has also observed that there is one more application Exh.U-19 dated 06.08.2009 on record. Thus it has come on record that immediately after termination, the respondent repeatedly made requests for his reinstatement and said fact has been proved by the respondent by producing the applications and representation/request made to the petitioner. Hence, the point of delay does not survive.

17. It has come on record that in the written statement, the petitioner has not denied the appointment of the respondent but opposed the same by saying that, the respondent was not appointed by adopting the legal procedure. However, at the same time, the petitioner has not brought on record what is the due procedure which ought to have followed in such matter.

18. In addition to the said fact, the witness of the petitioner Mahendrakumar Neware, in his oral evidence, has admitted that

Cleaner and Sweeper are two different posts and their wages are also different. He stated that the Depot is cleaned by regular Sweeper of corporation but when there is no permanent Sweeper, work of cleaning is done through the contract Sweeper. He further stated that the contract Sweepers are doing the said work from 2007. It means that prior to 2007 there was no contract Sweeper.

19. The witness of the petitioner in his oral evidence has also admitted that there are separate registers of bill at the Account Department and there is detail account statement. Though the said witness had shown his readiness to produce Shift Diary in the Court, during his cross-examination, but he did not produce and he has not assigned any reason for the same. He even did not state about availability or non-availability of the Shift Diary, wherein the attendance of the respondent was recorded.

20. In the light of the said fact, the learned Labour Court has rightly relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others*, reported in AIR 1968 SC 1413, wherein it has held that, the party in possession of best evidence which would throw light on the issue in controversy withholding it, the Court ought to draw adverse inference.

21. Furthermore, the respondent filed on record the Presentee Register (Exhs.U-38 to U-43) wherein the presentee of the respondent was maintained as regards work done, date and remuneration. The above referred documents are from the period of 1998 to 2003 and Exh.U-43 is of 2006.

22. The petitioner has not cross-examined the witness on this point and as such, the said evidence remained unchallenged. The learned Labour Court then considered the other factors, namely in the area of Depot in normal condition, how many employees will require for cleaning and effect of non-production of the documents by the petitioner.

23. Thus, in the circumstances, it cannot be said that the burden

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25. was shifted by the learned Labour Court on the petitioner/corporation in the present case as regards the fact that whether the respondent worked for 240 days in the preceding year.

26. The judgments cited by the learned counsel for the petitioner, are distinguishable on facts and hence, are of no help to the petitioner.

27. Having held so, I have no hesitation to hold that the petitioner has not made out any case for interference. Accordingly, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]