

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

WRIT PETITION NO.7197 OF 2018

(VINOD SHIVDAS KALAKHE...VS.. THE MANAGER, AGRICULTURAL PRODUCE MARKET
COMMITTEE & 2 OTH.)

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

Court's or Judge's orders

Ms Hemlata S. Dhande, Advocate for Petitioner.
Shri R.N.Ghuge, Advocate for the Respondent No.1.
Shri H.D.Dube, A.G.P. for Respondent Nos. 2 and 3.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 03, 2023.

1. Heard.
2. The compliant filed by the petitioner under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU & PULP Act") came to be rejected by the Labour Court vide judgment and order dated 27/09/2013, which was upheld by the learned Industrial Court in revision by confirming the dismissal of the petitioner by the respondent APMC vide impugned judgment and order dated 13/03/2018, which is under challenge in this writ petition.
3. It is the case of the petitioner that he was appointed as daily wager during the period from 01/12/1987 till 28/12/1995 and he worked 240 days in every year. The services of the petitioner were terminated on 28/12/1995 and allegedly since there was no

compliance of Section 25-F, 25-G and Rule 81 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the I.D. Act”) the complaint came to be filed under the provisions of the MRTU & PULP Act, which was rejected and against the same on filing revision it was also dismissed. Hence, this petition.

4. The learned counsel for the petitioner submits that though the respondent/ employer failed to establish that the petitioner did not work for 240 days in any year during the period between 01/12/1987 till 28/12/1995 dismissing the complaint by holding that the petitioner has failed to prove that he worked for 240 days in a year, is contrary and is not sustainable in the eyes of law.

5. It is submitted that both the Courts below have committed error in relying upon the chart filed by the respondent to show that the petitioner never worked for 240 days in any year between 1987 and 1995. She accordingly prays for quashing and setting aside the impugned judgment and order.

6. On the other hand, the learned counsel for the respondent No.1 supports the impugned judgment and order and submits that no error has been committed by both the Courts below rejecting the complaint of the petitioner on the ground that the petitioner failed to prove that he worked for 240 days in a year between 1987 and

1995. In support of his contention, the learned counsel for the respondent No.1 has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *State of Uttarakhand and others ..vs.. Sureshwati*, reported in **(2021) 3 SCC 108**.

7. In the light of the rival contentions, I have perused the record and the impugned judgment and order.

8. The Hon'ble Supreme Court in the case of *State of Uttarakhand* (supra) had an occasion to deal with the issue about onus to prove 240 days of continuous service in preceding 12 months prior to the alleged termination and while reiterating the law in this regard has held thus:

“25. On the basis of the evidence led before the Labour Court, we hold that the School has established that the respondent had abandoned her service in 1997, and had never reported back for work. The respondent has failed to discharge the onus to prove that she had worked for 240 days in the preceding 12 months prior to her alleged termination on 8.3.2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days in the twelve months preceding the date of her alleged termination on 8.3.2006, which she failed to discharge.

26. A Division Bench of this Court in Bhavnagar Municipal Corpn. v. Jadeja

Govubha Chhanubha held that : (SCC pp 134-35, para 7)

“7. It is fairly well-settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947. For the respondent to succeed in that attempt he was required to show that he was in service for 240 days in terms of Section 25-B(2) (a)(ii). The burden to prove that he was in actual and continuous service of the employer for the said period lay squarely on the workman. The decisions of this Court in Range Forest Officer v. S.T. Hadimani, Municipal Corpn., Faridabad v. Siri Niwas, M.P. Electricity Board v. Hariram, Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan, Surendranagar District Panchayat v. Jethabhai Pitamberbhai and R.M. Yellatti v. Executive Engineer unequivocally recognise the principle that the burden to prove that the workman had worked for 240 days is entirely upon him. So also the question whether an adverse inference could be drawn against the employer in case he did not produce the best evidence available with it, has been the subject-matter of pronouncements of this Court in Municipal Corpn., Faridabad v. Siri Niwas and M.P. Electricity Board v. Hariram, reiterated in RBI v. S. Mani. This Court has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it.”

9. From the above referred observations, it is evident that the entire onus is upon the workman to prove that he/she had worked continuously for 240 days in one year preceding the date of the alleged termination.

10. In the present matter, admittedly, except the pleadings and the statement in the affidavit-in-chief that the petitioner worked for 240 days, no evidence has been brought on record by the petitioner to prove the said fact. Further, no application was also moved by the petitioner calling upon the employer to produce the relevant record, which was in possession of the respondent/APMC, to establish that the petitioner had worked for 240 days in the preceding year.

11. In the circumstances, I do not find any error committed by both the Courts below in holding that the petitioner has not continuously worked for 240 days in a year. Accordingly, I passed the following order:

The writ petition is **dismissed**. No order as to costs.

JUDGE