



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 1955 OF 2013

- 1] The Executive Engineer,
P.W.D., Division No.3, Civil Lines,
Nagpur.
- 2] Deputy Engineer,
P.W.D., Sub-Division Kuhi,
Tah. Kuhi, District – Nagpur.

...PETITIONERS

Versus

- 1] Yuvraj s/o Shankarrao Shende,
aged about 40 years,
R/o Katara, Tah. Kuhi,
District – Nagpur.
- 2] Learned Second Labour Court,
Nagpur.

...RESPONDENTS

Mr. H.D. Futane, A.G.P. for the petitioners/State.
Mr. Gaurav Balpande h/f Mr. P.D. Randive, Counsel for respondent no.1.

CORAM : ANIL L. PANSARE, J.

DATE : DECEMBER 4, 2024

ORAL JUDGMENT :

The petitioners – Public Works Department are aggrieved by award dated 27/4/2012 passed by the Judge, Second Labour Court, Nagpur, in Reference (IDA) Case No. 53/2008. By the said award, the Labour Court has answered

the reference in the affirmative in favour of respondent no.1 and held that his termination, at the hands of the petitioners, with effect from 6/8/2007, suffers from illegality inasmuch as the petitioners failed to follow the procedure as stipulated under Sections 25F and 25G of the Industrial Disputes Act, 1947 (for short “Act of 1947”). Accordingly, the order of termination was quashed and set aside. The petitioners were directed to reinstate respondent no.1 with continuity in service and with full back wages.

2] Having heard both sides and having gone through the material placed on record, the question that arises for consideration is whether respondent no.1 was an EGS or NMR workman.

3] The petitioners’ contention was that respondent no.1 was an EGS workman. As against, respondent no.1’s contention was that he was an NMR workman.

4] The learned Counsel for respondent no.1 submits that employment under NMR is a regular employment. As against, employment under EGS is for specific work and the

employment ceases the moment the work is completed.

5] The Labour Court found that the petitioners failed to show that respondent no.1 was an EGS workman. The reasons assigned are as under :

“14. However, the Party No. 1 has not disputed the earlier litigations between them and the Party No.2. They have also not disputed that by order passed in Complaint ULP No.637/90, they were directed to reinstate the Party No.2 on his earlier post. If such is the case and that order is not yet set aside by any Court, then the Party No.1 has to act as per that order. It is pertinent to note that the Party No.1 has not brought the muster rolls of the earlier work of the Party No.2 i.e. dated 1.1.1986 till 15.6.1990 in which period Party No.2 is contending that he was working as NMR employee. If by order in Complaint ULP No.637/90, the Party No.1 was directed to reinstate him on his earlier post, then, Party No.1 cannot employ him on another work and so, though the party no.1 has tendered in evidence many muster rolls of EGS Scheme showing the attendance of Party No.2, it is of no assistance to the Party No.1. Thus, adverse inference can safely be drawn that the Party No.2 was working as NMR employee since 1.1.1986 to 15.6.1990. So, the Party No.1 has not brought on record the muster rolls for that period. Though, the party No.1 is contending that the Party No.2 has been absent from work since 15.4.2006, it has not tendered in evidence the muster rolls for the period beyond 15.4.2006. On the contrary, it has admitted that the Party No.2 had served the approach notice on 23.8.2007 which supports the contention of Party No.2 that he was terminated on 6.8.2007 after withdrawal of complaint by him on 4.8.2007.”

6] As could be seen, in earlier round of litigation, in Complaint ULP No. 637/1990, the Labour Court directed the petitioners to reinstate respondent no.1 on his earlier post. That order has attained finality. The petitioners failed to place on record muster roll of the earlier work done by respondent no.1, viz., work done for the period from 1/1/1986 till 15/6/1990. The Labour Court then held that had respondent no.1 been employed in EGS scheme, the Labour Court, in earlier complaint, could not have directed the petitioners to reinstate him on the earlier post. Accordingly and for want of evidence, the Labour Court has drawn adverse inference against the petitioners and held that respondent no.1 was working as NMR workman since 1/1/1986.

7] So far as theory of absenteeism is concerned, the Labour Court held that the petitioners failed to tender evidence of absenteeism of respondent no.1 with effect from 15/4/2006. Rather, the petitioners' witness admitted that the petitioners had served the approach notice to respondent no. 1 on 23/8/2007, which, in a way, supports the contention of respondent no.1 that he was terminated on 6/8/2007. This

termination has been done once respondent no.1 withdrawn the earlier complaint.

8] The learned A.G.P for the petitioners failed to show any evidence to show that respondent no.1 was appointed under EGS scheme or that the procedure, as prescribed under Sections 25F and 25G of the Act of 1947, was followed before terminating the services of respondent no.1. That being so, I do not find any reason to interfere with the impugned award.

9] The petition is accordingly dismissed. Rule is discharged.

JUDGE

Sumit