



Writ Petition No.24910 of 2014

respondent Labour Court dated 27.05.2014 passed in I.D.No.76 of 2010 as illegal, arbitrary and contrary to law and consequently, direct the second respondent to reinstate the petitioner with full back wages, continuity of service and all other benefits.

For Petitioner : M/s.Balan Haridass

For Respondents : Labour Court – R. 1

Mr.G.Ananda Krishnan for
M/s.Agam Legal for R2

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the concerned records from the first respondent, quash the Award of the first respondent Labour Court dated 27.05.2014 passed in I.D.No.76 of 2010 as illegal, arbitrary and contrary to law and consequently, direct the second respondent to reinstate the petitioner with full back wages, continuity of service and all other benefits.

2.The brief facts of the case as narrated in the affidavit filed in support of the Writ Petition, are stated below:



The petitioner was appointed as clerk in the Head Office of the respondent company on 12/2/1997. He was transferred to Mundiampakkam Branch on 10.04.2002 and he was subsequently transferred to Vazhuthareddy Branch on 01.02.2009. However, on 30.04.2009, the second respondent terminated services of the petitioner by way of an oral order made by the Assistant General Manager, Muthuramalingam. The petitioner made several requests to the respondent to reinstate him, but all his efforts ended in vain. The respondent had not conducted any inquiry and not issued any notice before the termination. The respondent did not pay any compensation to the petitioner. Aggrieved by the same, the petitioner raised an industrial dispute vide I.D.No.76 of 2010 before the 1st respondent Labour Court, questioning the denial of employment on and from 01.05.2009. The Labour Court, on consideration of both oral and documentary evidence put in by the parties, by impugned order, dated 27.05.2014, dismissed the petition. Challenging the same, the petitioner has come forward with the present Writ Petition.

3. A detailed counter affidavit has been filed on behalf of the 2nd respondent, wherein, it has been stated that the petitioner is not a workman



in the respondent company, he was not appointed as a clerk on 12.02.1997 and he was not transferred to other Branches, the petitioner never worked in the respondent company, that too in the Head Office, where only higher officials of the company are working. It is stated further that the petitioner never received any salary or other benefits from the respondent company, the respondent used to hire trucks from various transport companies to transport the products of the respondent, and the petitioner was working in a Lorry Transport Company which supplied trucks to the respondent company and that the relationship of employer and the workman never existed between the second respondent and the petitioner and the petitioner has not produced the appointment order or the salary slips to establish that he was working in the respondent company.

4. It is further stated in the counter affidavit that before the 1st respondent Labour Court, the petitioner has failed to establish that he was a workman, appointed in the respondent company and that he was continuously engaged for a period of 240 days prior to alleged oral termination and therefore, he is not entitled to the benefits under Section 25F of the Industrial Disputes Act, 1947, and that 1st respondent Labour Court,



has dealt with the matter in proper perspective and rightly denied the relief sought for by the petitioner by award, dated 27.05.2014 which requires no interference.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

6. Even though certain issues were decided in the impugned award against the respondent Management/second respondent Management, the second respondent Management did not chose to prefer writ petition, thereby, the findings of the labour Court in the impugned order that the petitioner is a workman and that he was terminated without conducting an enquiry, etc., have become final. Therefore, the only point that falls for consideration is whether the finding of the labour Court that the petitioner has not worked for 240 days continuously in one calendar year preceding to his termination/retrenchment can be interfered with.



7. In order to claim the benefit under Section 25 F of the Industrial Disputes Act, the petitioner is under the obligation to prove that he was in continuous service for a period of 240 days in preceding to the date of his termination/retrenchment.

8. The petitioner has filed as many as 30 documents before the labour Court as Exs.W.1 to W.30. It is the observation of the labour Court that though the petitioner has filed 30 documents, there is no record to show that he has been continuously working for 240 days as required under Section 25 F of the Act. The labour Court has come to the conclusion that petitioner has filed no material to hold that he worked continuously for 240 days in a calendar year presiding to his retrenchment.

9. The learned counsel for the petitioner has placed reliance upon the judgment reported in ***(2010) 1 SUPREME COURT CASES – 47 THE DIRECTOR, FISHERIES TERMINAL DEPARTMENT Vs. BHIKUBHAI MEGHAJIBHAI CHAVDA***, wherein at paragraph No.17, it has been held as follows:-



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17. Applying the principles laid down in the above case by this Court, the evidence produced by the appellant has not been consistent. The appellant claims that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls, etc., in connection with his service. He has come forward and deposed, so in our opinion, the burden of proof shifts to the appellant employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.”

10. Further, the Hon'ble Apex Court in THE FOREST RANGE OFFICER Vs. S.T.HADIMANI {2002 (2) LLN – 391}, has held that burden lies on the employee to prove his case. Relevant portion of the judgment reads thus:-



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“In the instant case, dispute was referred to the Labour Court that the respondent and worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat



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v. Pratam Singh Narsinh Parmar, JT (2001) 3 SC 326.

In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is



really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.”

11. In the case of *Manager, Reserve Bank of India vs. S.Mani reported in 2005 (5) SCC 100*, Three Judges of the Apex Court has held that, the initial burden is on the workmen to show that, they had completed 240 days of service and once, they have discharged the initial burden, it is for the employer to establish that, the case of the workmen is incorrect. For better appreciation, relevant portion of the said judgment is extracted hereunder:

“28. The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the



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appellant on the premise that they have failed to prove
their plea of abandonment of service stating:

“It is admitted case of the parties that all the first parties under the references CRs Nos. 1 to 11 of 1992 have been appointed by the second party as ticca mazdoors. As per the first parties, they had worked continuously from April 1980 to December 1982. But the second party had denied the abovesaid claim of continuous service of the first parties on the ground that the first parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and their services were required whenever



necessity arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the first party, since the second party had denied the abovesaid claim of continuous period of service, it is for the second party to prove through the records available with them as the relevant records could be available only with the second party.”

12. In view of the discussion made above, the petitioner having given evidence before the labour Court that he worked continuously with the second respondent Management has discharged his initial burden. However, the second respondent has not placed the material to show that the petitioner has not worked for 240 days. Therefore, the impugned award which has decided that the petitioner has not worked for 240 days continuously preceding one year from the date of alleged termination/retranchment is erroneous on account of mis-interpretation of the legal position.



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Accordingly, impugned award is liable to be set aside.

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13. In the result, this writ petition is allowed, directing the second respondent to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits. No costs.

7/6/2024

Index : Yes/No

Speaking order: Yes/No

dn/mvs.

To

1.The Presiding Officer,
Labour Court,
Cuddalore.

Dr.D. NAGARJUN, J



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Pre-delivery order made in
W.P.No.24910 of 2014

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