



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

WRIT PETITION NO. 1455 OF 2019

Rajkumar Devilal Thakare
 Aged about 40 years
 R/o Mangejhari, Post Sukadi Dakaram
 Tah. Tiroda, District Gondia

}

.. Petitioner

Versus

1. The Assistant Conservator of Forest
Wildlife, Sakoli, Tah. Sakoli,
District Bhandara
2. The Range Forest Officer,
Wildlife, Sakoli, Tah. Sakoli,
District Bhandara
3. The Conservator of Forest
Wildlife, Gondia,
Tah. & District Gondia

}

.. Respondents

WITH

WRIT PETITION NO. 1447 OF 2019

Likhiram S/o Puranlal Maraskolhe
 Aged about 45 years
 R/o Mangejhari, Post Sukadi Dakaram
 Tah. Tiroda, District Gondia

}

.. Petitioner

Versus

1. The Assistant Conservator of Forest
Wildlife, Sakoli, Tah. Sakoli,
District Bhandara
2. The Range Forest Officer,
Wildlife, Sakoli, Tah. Sakoli,
District Bhandara
3. The Conservator of Forest
Wildlife, Gondia,
Tah. & District Gondia

}

.. Respondents

Mr. R.S.Bhure, Advocate for petitioner.
Mr. H.R.Dhumale, AGP for respondents.

CORAM : SIDDHESHWAR S. THOMBARE, J.

DATED : NOVEMBER 07, 2025

ORAL JUDGMENT

(1) Heard. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsel for the petitioners and learned Assistant Government Pleader for respondents.

(2) These petitions are directed against the orders dated 12/05/2017 and 09/05/2017 respectively passed by the learned Presiding Officer, Labour Court, Bhandara, whereby both references were answered in the negative.

(3) It is the case of the petitioners before the Labour Court that the References were referred by the Additional Commissioner of Labour for adjudication under Section 10(1) read with 12(5) of the Industrial Disputes Act, 1947 to determine whether the petitioners should be reinstated in services by party No.1/respondent No.1 with full back wages and continuity of service. It is the case of the petitioners that they were employed as Chowkidar/Watchman by oral order on 01/01/2004 and in the month of March, 2003 respectively and they used to receive monthly salary of Rs.2100/- and in the course of their employment, their duties were to protect the forest trees from illegal felling, illegal cattle grazing and poaching. For carrying out said duty they used to stay in

camps in the forest. They performed all the incidental jobs assigned to them by their superiors in the Forest Department. Therefore, their specific contention is that their work was perennial in nature.

(4) Learned counsel for the petitioners submits that the petitioners had continuously worked with the department for about 5 years, but despite of completing more than 240 days in every calendar year of service, the department did not accord them the status of permanent employees. It is their contention that the Forest Department is an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The petitioners were terminated w.e.f. 26/09/2006 and 01/04/2007 without following due process of law. The petitioners submitted their reply to legal notice through his counsel on 12/04/2012, but the said reply was not answered back and therefore, they challenged their termination before the learned Assistant Labour Commissioner, Bhandara on 16/05/2012, by contending that their oral termination dated 26/09/2006 and 01/04/2007 is totally in disregard to the principles of natural justice and is in blatant violations of the provisions of law. Before termination of the services of the petitioners, the respondents neither issued notice of termination nor paid them notice pay in lieu of notice. They had not been paid retrenchment compensation and therefore, it violated the provisions under Section 25-F of the Industrial Disputes Act, 1947. Before terminating their services, the respondents failed to publish the seniority list, much less, have not maintained the seniority list of the employees properly.

(5) The petitioners further submitted that their termination is in total contravention of the Model Standing Order, 1946, thereby violating the provisions

of Section 25-G and 25-H of the Industrial Disputes Act, 1947 and therefore, they seek relief of reinstatement with full back wages and continuity of service.

(6) Learned counsel for the petitioners would submit that the findings recorded by the learned Labour Court are not proper. There were specific applications moved by the present petitioners before the learned Labour Court asking the respondents to place on record the documents pertaining to the employment of the petitioners. He would further submit that despite specific applications, no such record was produced before the learned Labour Court by respondents. He would further submit that there was non-compliance of Section 25-G of the Industrial Disputes Act, 1947 and seniority was not followed. The principle of “last come first go” was also not followed. On that count he submit that the Labour Court committed an error while answering the reference in the negative.

(7) Per contra, learned Assistant Government Pleader submits that the petitioners failed to prove their case that they had worked with the department during that period. He invited my attention to the observations made by the learned Labour Court that after submission of applications by the petitioners before the learned Labour Court, they were permitted to inspect the record. Despite of granting such order, the petitioners never turned up to inspect the record, therefore, he submitted that learned Labour Court has rightly considered the matter that the petitioners failed to prove that they had worked for 240 days in the preceding year and therefore, he supports the order.

(8) Learned counsel for the petitioners vehemently submitted that specific applications were filed and it was the department who had withheld the record. He would further submit that once it was accepted that the petitioners were in employment, deviation is not permissible for not following provision of Section 25-G of the Industrial Disputes Act.

(9) In support of his contention he relied upon the judgment of the Hon'ble Apex Court in the case of Samishta Dube vs. City Board, Etawah and another reported in (1993) 3 Supreme Court Cases 14, particularly to paras 7, 8, 9, 11 and would submit that law laid down by the Hon'ble Apex Court was not followed. Therefore, learned Labour Court ought not to have answered the reference in the negative. Paras 7, 8, 9 and 11 of the above cited judgment reads as under :-

"7. We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6P of the U.P. Act (which corresponds to Section 25G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, - in the absence of any agreement between the employer and the workmen in this behalf - the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6-N (which corresponds to Section 25-F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh v. Presiding Officer 1986 Supp SCC 679 in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India v. S. Satyam (1996) 5 SSC 419)

8. Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6-P of the U.P. Act read with Section 2(z) of

the U.P. Act which defines "workman".

9. *It is true that the rule of "first come, last go" in Section 6-P could be deviated from by an employer because the section uses the word "ordinarily". It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or loss of confidence etc., as held in Swadesamitran Ltd. v. Workmen AIR 1960 SC 762. But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act.*

10.

11. *In the result, the High Court was wrong in setting aside the orders of the Labour Court. We accordingly set aside the judgment of the High Court and restore the order of the Labour Court. The said order of the Labour Court will be complied with by respondent within 15 days of the receipt of this order. As the re-appointment was denied from the date of the award, namely, 28.1.1993, the appellant will be entitled to re-appointment and all consequential benefits w.e.f. 28.1.1993 including back-wages inasmuch as no attempt has been made by the respondent to contend that the appellant was otherwise gainfully employed. Appeal is allowed as stated above. There will be no order as to costs."*

(10) After going through the record, I find that there were applications each Exh.U-5 filed on 11/08/2014 calling upon respondent No.1 to file payment voucher, payment receipt from 01/01/2004 to 01/04/2007 and March, 2003 to 26/09/2006, muster roll of the said period, seniority list of 2004-2006 and one G.R. dated 02/07/2003. On those applications petitioners were directed to first state the beat in which they had worked from 01/01/2004 to 01/04/2007 and March, 2003 to 26/09/2006 respectively, so that respondents would be directed to produce those documents. The petitioners failed to state the beats in which they had worked for the said period. Therefore, their request to produce the documents was rejected and said order attained the finality, as the petitioners had not challenged the same. However, an order was passed by the learned Labour Court that the petitioners were having right to inspect the said document, but the

petitioners neither visited the office, nor verified the documents and therefore, the petitioners failed to bring on record, the material documents to prove that they have continuously worked for more than 240 days in any preceding year of their service, more particularly, in the preceding year of their termination.

(11) Learned Labour Court had observed that though the witness of the respondents Shri Naresh Khandate (D.W.No.1) had admitted in cross-examination that the petitioners were engaged and they were terminated on 01/04/2007 and on 26/09/2006, respectively, however, they denied that the petitioners had worked for more than 240 days in all these years of 2003 to 2007. But the burden to prove that they had worked in the department for more than 240 days in the preceding year cannot be shifted upon the respondent department and the petitioners have to at least prove primarily, by placing on record some documents which reflects that they had worked there, but they failed to produce such document and therefore, learned Labour Court has rightly observed that the petitioners have failed to prove their case.

(12) After going through the impugned orders and documents which are placed on record, I find that the petitioners failed to prove that they had worked with the department for more than 240 days in the preceding year and to that effect, no record was produced by them before the learned Labour Court.

(13) The Hon'ble Apex Court in para 9 itself has observed that the rule of "last come first go" in Section 6-P could be deviated from by an employer because the section uses the word "ordinarily". It is therefore, permissible for the

employer to deviate from the rule in case of lack of efficiency or loss of confidence, etc.

(14) In these petitions, the petitioners failed to prove that they had worked with the department for 240 days in the preceding year, therefore, learned Labour Court has rightly considered the matter. Hence, I do not find any reason to interfere in the orders passed by the learned Labour Court. Accordingly, the writ petitions are dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)

KOLHE