



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

WRIT PETITION NO. 5233 OF 2019

Lalchand Ramaji Uikey Aged about 39 years R/o Mangejhari, Post Sukadi Dakaram, Tah. Tiroda, District Gondia	}	.. Petitioner
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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
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Mr. R.S.Bhure, Advocate for petitioner.
 Mr. A.A.Madiwale, 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 petitioner and learned Assistant Government Pleader for respondents.

(2) This petition is directed against the order dated 11/05/2017 passed by the learned Presiding Officer, Labour Court, Bhandara, whereby

reference was answered in the negative.

(3) It is the case of the petitioner before the Labour Court that the Reference was 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 petitioner should be reinstated in service by party No.1/respondent No.1 with full back wages and continuity of service. It is the case of the petitioner that he was employed as Chowkidar/Watchman vide its order issued in the month of 2003 and he used to receive monthly salary of Rs.2100/- and in the course of his employment, his duty was to protect the forest trees from illegal felling, illegal cattle grazing and poaching. For carrying out said duty he used to stay in camps in the forest. He performed all the incidental jobs assigned to him by his superiors in the Forest Department. Therefore, his specific contention is that his work was perennial in nature.

(4) Learned counsel for the petitioner submits that the petitioner 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 him the status of permanent employee. It is his contention that the Forest Department is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. He was terminated w.e.f. 01/07/2007 without following due process of law. He submitted his reply to legal notice through his counsel on 28/02/2012, but the said reply was not answered back and therefore, he challenged his termination before the learned Assistant Labour Commissioner, Bhandara on 04/04/2012, by contending that his oral termination dated

01/07/2007 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 petitioner, the respondent neither issued notice of termination nor paid him notice pay in lieu of notice. He has not been paid retrenchment compensation and therefore, it violated the provisions under Section 25-F of the Industrial Disputes Act. Before terminating his services, the respondent failed to publish the seniority list, much less, have not maintained the seniority list of the employees properly.

(5) He further submitted that his 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, he seeks relief of reinstatement with full back wages and continuity of service.

(6) Learned counsel for the petitioner would further submits that the findings recorded by the learned Labour Court are not proper. There was a specific application moved by the present petitioner before the learned Labour Court asking the respondents to place on record the documents pertaining to the employment of the petitioner. He would further submit that despite specific application, no such record was produced before the learned Labour Court by respondents. He would further submit that there is 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 for respondents submits that the petitioner failed to prove his case that he 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 application by the petitioner before the learned Labour Court, he was permitted to inspect the record. In spite of granting such order, the petitioner never turned up to inspect the record, therefore, he submitted that learned Labour Court has rightly considered the matter that the petitioner failed to prove that he had worked for 240 days in the preceding year and therefore, he supports the order.

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

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 in those paras 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 6-P of the U.P. Act (which corresponds to Section 25-G 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."*

(9) After going through the record, I find that there was application Exh.U-5 filed on 11/08/2014 calling upon respondent No.1 to file payment voucher, payment receipt from May, 2003 to 01/07/2007, muster roll of the said

period, seniority list of 2004-2006 and one G.R. dated 02/07/2003. On that application petitioner was directed to first state the beat in which he had worked from May, 2003 to 01/07/2007, so that respondents would be directed to produce those documents. The petitioner failed to state the beats in which he had worked for the said period. Therefore, his request to produce the documents was rejected and said order attained the finality, as the petitioner had not challenged the same. However, an order was passed by the learned Labour Court that the petitioner was having right to inspect the said document, but the petitioner neither visited the office nor verified the documents and therefore, the petitioner failed to bring on record, the material documents to prove that he has continuously worked for more than 240 days in any preceding year of his service, more particularly, in the preceding year of his termination.

(10) 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 petitioner was engaged in the month of 2003 and he was terminated on 01/07/2007, however, he denied that the petitioner had worked for more than 240 days in all these years of 2003 to 2007. But the burden to prove that he has worked in the department for more than 240 days in the preceding year cannot be shifted upon the respondent department and the petitioner has to at least prove primarily, by placing on record some documents which reflect that he had worked there, but he failed to produce such document and therefore, learned Labour Court has rightly observed that the petitioner had failed to prove his case.

(11) After going through the impugned orders and documents which are placed on record, I find that the petitioner 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.

(12) 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.

(13) In this petition, the petitioner failed to prove that he 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 order passed by the learned Labour Court. Accordingly, the writ petition is dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)

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