IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 5844 of 2018

ASHOK SINGH TOMAR

Versus

THE FOREST RANG OFFICER AND OTHERS

Appearance:

Shri Girija Shankar Sharma - Advocate for the petitioner.

Shri Nitin Goyal – Panel Lawyer appeared for respondent.

Reserved on	04/11/2024
Delivered on	05/12/2024

ORDER

1. The Instant petition under Article 226/227 of the Constitution of India is preferred against the Award dated 07.03.2017 (pronounced on 18.04.2017) passed by Labour Court No.2, Gwalior, whereby the application of the petitioner under Section 10(1) referred to by Labour Commissioner for adjudication of the dispute between the petitioner and respondents was dismissed on the ground that the petitioner could not prove the factum of his employment in the respondent/department.

2. The petitioner is further aggrieved by the order dated

30.01.2018 whereby the review application filed by the petitioner was also dismissed on the ground of maintainability.

3. Short facts leading to the present controversy are that the petitioner was appointed on the post of Security Guard/labour on 16.07.2011 and was posted for work at Village- Soi Beat and was given the work of plantation and since 16.07.2011 till 01.06.2014 he continuously worked in the said Beat and his presence was marked on the muster roll by Beat Guard, Makarand Singh Narwariya and he was paid the salary by Deputy Ranger Shri Nathu Singh Bhadoria. Thereafter, his services were terminated orally vide order dated 01.06.2014 by Beat Guard Makarand Singh Narwariya and before termination neither any show-cause notice was issued nor any opportunity of hearing was granted to the petitioner and as the petitioner had worked for more than 240 days in a calender year and was not given one month's notice or was paid the salary thereto alleging the said act to be contrary to the provisions of Section 25(F) of the Industrial Disputes Act, the petitioner submitted an application under Section 2 and 10 of Industrial Dispute Act before Assistant Labour Commissioner and, thereafter, the reference was forwarded to Labour Court No.2, Gwalior for adjudication.

4. Before Labour Court No.2, Gwalior the petitioner submitted his statement of claim stating that his services have been terminated orally without giving any show-cause notice or without giving any opportunity of hearing and as he has worked

for 240 days and there is clear violation of provisons of Section 25(f) of I.D. Act as no one month's notice or salary for the said period was ever paid to him, therefore, he is liable to be reinstated back in service with backwages. In the statement of claim it was also averred that the respondents have re-instated some junior daily wagers, but despite of the order of State Government and requested by petitioner he was not re-instated back in service. Further it has been stated that other employees Khushilal, Bhurekaka, Kallu, Amar Singh and Uttam who were working along with him are still working in the respondent department, therefore, he is also entitled for reinstatement.

5. In reply the respondents stated that the petitioner was working under the Forest Society Jabasha Range, Ater and the said society was a private society and as per the requirement of the Labour the forest society engaged by way of resolution, certain labourers and salary to those labourers was paid by the Society. It was further stated that the employees of the forest society cannot be said to be an employee of the Forest Department, therefore, the claim as raised by the petitioner is frivolous and in absence of impleading the forest society, the claim of the petitioner deserves to be rejected.

6. A written statement was filed on behalf of respondent no.3/Society, wherein it was stated that the petitioner was never employed by the Forest Society and the society has never engaged the petitioner as labour nor has paid him any salary. Even the

president of the society had no authority to engage any employee in the forest. Thus, submitted that since there is no employer-employee relationship between it and the petitioner, the reference itself is bad, therefore, it be dismissed.

7. Along with statement of claim, the petitioner submitted certain documentary evidence which included appointment certificate cum identity card issued by competent authority and other documents and also examined witness Khushilal who was also an employee of the respondent no.1, but without considering the statements of Khushilal and statements of respondent no.3, the President of the Forest Society, learned Labour Court recorded the findings that petitioner was not able to prove that he was employee of the respondent no.1 and 2, though during the trial the petitioner had filed an application for production of the service record of the petitioner which was in the possession of the respondents, however, even after passing of the order of Labour Court for production of the record or affidavit in respect of the record, the order was not complied with by respondent no.2 and even in this eventuality no adverse influence was drawn against respondent no.2 and the reference application was dismissed vide order dated 07.03.2017 against which a review application along with documents in respect of his working in the respondent department was filed, but the Labour Court ignoring the documents further dismissed the review petition vide order dated 31.01.2018 on the ground of maintainability. Thus, aggrieved by

the aforesaid, the present petition has been filed.

8. Learned counsel for the petitioner had vehemently contended that the order dated 07.03.2017 passed by Labour Court since is contrary to law and provisions of Section 25(f) of the I.D. Act is not sustainable and, therefore, deserves to be set aside. Further it is argued that the Labour Court had recorded a finding that the petitioner could not prove the factum of his employment with respondent no.1 and 2 which was erroneous and contrary to record as it was the stand of respondent no.1 and 2 that he was an employee of respondent no.3/Society, whereas respondent no.3/Society in its reply had categorically denied that the petitioner was not their employee, thus, when by way of evidence it was proved by the petitioner that he had worked with the department for more than 240 days, the award is liable to be set aside.

9. Learned counsel has also argued that though learned Labour Court had directed the respondents to produce the record which was not submitted nor any affidavit in that regard was placed before the Labour Court, but instead of taking adverse inference against the department, the reference itself was dismissed which is *per se* illegal. It was lastly argued that the learned Labour Court had also not considered the documents appended along with the review application which contain the documents in respect of payment of salary to him by the respondent department, therefore, the findings arrived at therein also deserves to be set aside and

while allowing the petition both the orders be set aside and the petitioner be reinstated with back-wages.

10. On the other, on the basis of the contents of the return, learned Government Advocate argued that the State Government vide Resolution dated 22.10.2001 for securing Forest area resolved to take help of general public who were residing in the nearby areas and in that context for dense forest areas constitution of Forest Security Society was resolved with a further stipulation that after selling the forest produce 50% of the amount shall be disbursed between the Members of Society and 30% of the amount would be invested for the development of the rural area and the rest 20% shall be invested towards the development of forest areas and in that context the Forest Security Society for village Soi was constituted in the form of respondent no.3 and as per resolution respondent no.3 was supposed to engage persons residing is nearby forest area, thus, there was no relationship between the forest department or the petitioner of an employee of the said society and employer and from the documentary evidence which has been produced by the department, the Labour Court has found that the petitioner was not the employee of the department and on that very reason the reference was answered in negative and was dismissed by the impugned order which cannot be faulted with. Likewise the review petition which has been filed by the petitioner was also rightly rejected.

11. It was further submitted that the petitioner had not filed any

document by which it could be gathered that he was appointed against some vacant post or even was appointed as daily wager in the respondent department and, therefore, the petitioner at the most could be said to be an employee of respondent no.3 that too as and when the work was required. Lastly, an argument on technical grounds has also been raised that against an order i.e. impugned herein alternative remedy lay before industrial tribunal, but instead of approaching for availing the alternative remedy the petitioner has directly filed this petition which is liable to be dismissed on the ground of availability of alternative remedy.

12. A rejoinder has been filed in the matter on the basis of which it was argued that from the gazzette notification dated 22.10.2001, whereby the societies were directed to be formed, it is clear that the society is not a private society and is constituted by the State Government and State Government have full control over the society, even the secretary of the said society who is the officio incharge is forest ranger or the forest guard and as the services of the petitioner had been terminated by the forest guard by an oral order it is not correct to say that there exist no relationship of employer and employee between the petitioner and respondent no.1 and 2 and this aspect has not been considered by the learned Labour Court, therefore, the present petition deserves to be allowed.

13. With regard to the alternative remedy of appeal it is argued that the said contention is arbitrary and contrary to law as in the

present case no remedy of appeal is available to the petitioner and so far as the contention that the petitioner was not appointed against a vacant post or as a daily wager, it is also mis-conceived and not accepted since there was a provision of formation of society by the State Government as per the Gazzette notification dated 22.10.2001 for safe guarding the forest area and plantation for which the employees/labour were required to and has been mandatory appointed and as the financial and the adminstrative control of the Society was that of the State Government, therefore, the provision of Industrial Disputes Act is applicable upon the society also.

14. None for respondent no.3

15. Heard the counsels for the parties and perused the record.

16. In large number of cases the position of law relating to the onus to be discharged to one's case has been delianated. In **Range Forest Officer vs S.T. Hadimani** reported in **2002 (3) SCC 25**, it has been held as follows:

> *"2. 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.
3.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 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."

17. The said decision was followed in **M/S Essen Deinki vs Rajiv Kumar** reported in **2002 (8) SCC 400**.

18. In **Rajasthan State Ganganagar S. Mills Ltd vs State Of**

Rajasthan & Anr reported in **2004 (8) SCC 161**, the possession was again reiterated in paragraph 6 as follows:

> *"It was the case of the workman that he had worked for more than 240 days in the concerned year. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (supra). No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed. Even if that period is taken into account with the period as stated in the affidavit filed by the employer the requirement prima facie does not appear to be fulfilled. The following period of engagement which was accepted was 6 days in July 1991, 15 = days in November 1991, 15= days in January 1992, 24 days in February 1992, 20= days in March 1992, 25 days in April 1992, 25 days in May 1992, 7= days in June 1992 and 5= days in July 1992. The Labour Court demanded production of muster*

roll for a period of 17.6.1991 to 12.11.1991. It included this period for which the muster roll was not produced and come to the conclusion that the workman had worked for more than 240 days without indicating as to the period to which period these 240 days were referable"

19. In **Municipal Corporation, Faridabad vs Siri Niwas** reported in **2004 (8) SCC 195,** it was held that the burden was on the workmen to show that he was working for 240 days in preceding one year prior to his alleged retrenchment.

20. In **M.P. Electricity Board vs Hariram** reported in **2004 (8) SCC 246,** the possession was again reiterated in para 11 as follows:

"11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas JT *2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard: "A court of law even in a case where provisions of the* Indian Evidence Act *apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be*

> *different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non- production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent.*

21. In the matter of **Manager, R.B.I., Bangalore vs S. Mani & Ors** reported in **2005 (5) SCC 100**, a Three Judge Bench of the Apex Court again considered the matter and held that the initial burden of proof was on the workmen to show that he had completed 240 days of service and the Tribunals view that the burden was on the employer was held to be erroneous. In the matter of **Batala Cooperative Sugar Mills Ltd vs Sowaran Singh** reported in **2005 (7) Supreme 165** it was held as follows:

> *"So far as the question of onus regarding working for more than 240 days is concerned, as observed by this court in Range Forest Officer vs. S.T. Hadimani (supra) the onus is on the workman."*

22. The position was examined in detail in **Surendranagar**

District Panchayat v. Dehyabhai Amarsingh reported in **2005 (7) Supreme 307** and the view expressed in Range Forest Officer, Siri Niwas, M.P. Electricity Board cases (supra) was reiterated.

23. In **R.M. Yellatti vs The Asst. Executive Engineer** reported in **JT 2005 (9) SC 340,** the decisions referred to above were noted and it was held as follows:

> *"Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by*

> *law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."*

24. In wake of the aforesaid legal position when the order of Labour Court is seen, it would be evident that except for Exhibit P/2 which is in identity card no other documentary evidence has been produced by the petitioner which could demonstrate that he had ever worked with the respondent department and even on the said identity card there is no mention of any outward number nor there is any signature of any officers of the department and also it is not clear that on the date when it was issued, the said area fell in the Forest Range for which it was issued so also the petitioner's witness Khusilal, who had deposed that the petitioner was working along with him in the department and had produced an appreciation letter exhibit P/3, but the list exhibit P/1 which has been issued by the department of the daily wagers there is no mention of Khusilal and the witness of the department Narendra in his cross-examination had deposed that such appreciation letters are given to the persons who had worked in the forest

range. On the basis of the aforesaid documentary evidence the factum of employement of the petitioner was not held to be proved by the Labour Court.

25. So also the statement of the petitioner with regard to employment of one Satyanarayan Sharma in his place is concerned, the Labour Court has observed that the name of Satyanarayan Sharma in the list of the employees is mentioned therein for the last 31 years, therefore, the statements of the petitioner in that regard was held to be doubtful. Further Labour Court has observed that though even upon directions issued to the department the record was not submitted, but when the petitioner himself could not primarily establish that he was in employment of the respondent no.1 and 2 no adverse inference can be drawn against the department as the initial burden of proving the facts could not be discharged by the petitioner which could have led the respondent no.1 and 2 to disprove the factum of his employment.

26. This Court is in full confirmity with the findings arrived at by the learned Labour Court and the aforesaid finding is also supported by the judgment which has been cited above. So far as the petitioner being an employee of respondent no.3 is concerned, the witness of respondent no.3 Smt. Rajo had also in specific terms denied the employment of the petitioner with the society. Thus, in absence of the aforesaid no inference can be drawn against the respondent no.1 and 2 that the petitioner was in their employment. This fact has also rightly been addressed upon by the

learned Labour Court.

27. Thus, when the factum of employment of the petitioner with respondent no.1 and 2 or even respondent no.3 could not be established, therefore, no question arose for any violation of provision of Section 25(f) of the I.D. Act and this aspect has also rightly been considered by the learned Labour Court.

28. In view of the aforesaid discussion I am of the considered view that no illegality has been committed by the learned Labour Court in dismissing the reference and the review.

29. The petition being sans merit is hereby **dismisssed**.

(Milind Ramesh Phadke)
Judge

chandni/ **05/12/2024**