

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 9715 of 1994

DATED: 06.02.2007

Between:

The Executive Engineer,
Zillage Parishad,
Karimnagar and another

Petitioners

And

Md. Nazeerula Haq, Ex-Work Inspector
and another
Respondents

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 9715 of 1994

ORDER:

Heard Sri R.Prem Sagar, learned Standing Counsel for the petitioners and Sri P.Kishore Rao, who appeared for the respondents.

This Writ Petition is filed aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Godavarikhani, in I.D.No.85 of 1991, dated 23.10.1992, whereby, the first respondent, who claimed to have worked with the petitioner from 1968 to 1974 was directed to be reinstated into service on the ground of violation of Section 25-F of the Industrial Disputes Act (for short, 'the Act') as a fresh candidate, but was, however, denied backwages and other benefits on the ground that he had approached the Tribunal belatedly i.e., seventeen years after his alleged termination.

The petitioner herein filed a counter before the Tribunal, wherein, a specific plea was taken that since they were not supposed to keep the records beyond ten years, consequently, the records were destroyed due to which, no records were available to show as to whether the first respondent worked with them from 1968 to 1974. The petitioner denied that the first respondent worked continuously from 1968 to 1974 as an N.M.R on daily wages, and contended that an N.M.R. would not be engaged

for such a long period. The petitioner also denied the allegations made by the first respondent and put the first respondent to strict proof of the same. It is also stated in the counter that the qualifications for appointment of Work Inspector is BE/LCE, that the name of the candidate is required to be sponsored through the Employment Exchange and that the appointing authority is the Superintending Engineer, P.R. Karimnagar. The petitioner herein also took the plea of inordinate delay and latches of more than seventeen years in approaching the Tribunal.

The Tribunal relied on a Xerox copy of the list of candidates appointed from time to time as Work Inspectors from 1959 to February, 1970, though an objection was taken to the marking of such a document, and held that, since the name of the first respondent herein was shown at serial no.46 and the date of appointment was shown as 01.04.1968, the 1st respondent was appointed vide proceedings dated 15.06.1968, and as the petitioner had not filed any documents or adduced any oral evidence examining such of its officials, who had worked under the petitioner herein during the said period, it must be held that the first respondent herein had worked for the period as mentioned by him in his evidence, which was more than 240 days in a given calendar year or within the 12 months continuous period prior to his removal from service i.e., on 21.12.1974 and that he was therefore entitled for the protection of Section 25-F of the Act.

It is well settled by a catena of judgments of the Supreme Court, in **Manager, Reserve Bank of India, Bangalore v. S.Mani**^[1]; **Batala Coop. Sugar Mills Ltd v. Sowaran Singh**^[2]; **Surendranagar District Panchayat v. Dahyabhai Amarsinh**^[3]; **Chief Engineer (construction) v. Keshava Rao (dead) by Lrs**^[4]; **Range Forest Officer v. S.T.Hadimini**^[5], that the burden is on workman to establish that he worked for a period of 240 days during the period of 12 months prior to his termination and it is only if this initial burden is discharged by the workman concerned, would the burden shift on the employer.

In the present case, the first respondent herein approached the Tribunal seventeen years after his alleged termination. He claimed to have worked from 1968 to 1974. The petitioner herein has specifically stated, in its counter before the Tribunal, that since they were not required to maintain records beyond ten years, all records beyond the said period of ten years had been destroyed and that there was nothing to show that the first respondent had worked with them. It is also stated therein that N.M.Rs are normally not engaged for such a long period. Except for the self serving oral testimony of the first respondent workman, there is no other evidence on record to show that he worked for a period of 240 days during the 12 months period preceding his alleged termination. Reliance placed

by the Tribunal on a xerox copy of the list of workmen to hold that the first respondent was appointed on 15.06.1968 is contrary to law, more so as no cogent reasons were furnished by the workman for not producing the original, in any event, even this document does not show that the petitioner worked for a period of 240 days during the 12 months period preceding his termination. In the absence of any evidence, except the self serving oral testimony of the workman himself, the Tribunal acted contrary to law in accepting the oral evidence of the first respondent and in holding that he had put in the required 240 days of service in the 12 months period preceding his termination. The findings of the Tribunal are based on no evidence and are perverse. The impugned award is, accordingly, quashed.

The Writ Petition is allowed. However, in the circumstances, without costs.

(RAMESH RANGANATHAN,J)

06.02.2007

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[\[1\]](#) (2005) 5 SCC 100

[\[2\]](#) (2005) 8 SCC 481

[\[3\]](#) (2005) 8 SCC 750

[\[4\]](#) (2005) 11 SCC 229

[\[5\]](#) (2002) 3 SCC 25