(Kailash Vs. Secretary, Jai Narayan Vyas University & ors.]
S.B.C.Writ Petition No. 3244/2003.

Date of order: 22nd December, 2006.

HON'BLE MR MOHAMMAD RAFIQ, J.

Mr Rajendra Kothari, for the petitioner.
Mr D.C.Sharma, for the respondents.

By this writ petition, the petitioner has challenged the award dated 12.3.2003 passed by Labour Court, Jodhpur and has prayed that the same be set aside and the respondents be directed to reinstate him and pay arrears of salary with 24% interest per annum.

A reference was made to the Labour Court on the point whether removal of the petitioner by the respondents from their services w.e.f 28.3.96 was legal and valid and if not, what relief he was entitled to. The Labour Court on the basis of evidence on record concluded that the petitioner has failed to prove that he was removed from service by the respondents on 28.3.96; he also failed to prove that he worked with them for 240 days in the calendar year and his services were terminated without complying with the provisions of the

Section 25-F of the Act.

Learned counsel for the petitioner argued that sufficient evidence was led by the petitioner before the Labour Court to prove that the petitioner had worked for more than 240 days in a calendar year and his services were terminated without complying with the provisions of Section 25-F. The learned Labour Court failed to objectively consider the evidence and has recorded a finding that petitioner abandoned the services. It was argued that the notice with regard to absence from duty was given to the petitioner on 14.11.94 and thereafter, subsequent similar notice dated 17.12.94 was given which were in fact, in respect of month of August and November and thereafter, petitioner had appeared on duty and continued to work. These notices could not be misread to hold that the petitioner abandoned the services. It was also argued that after termination of the petitioner, new persons have been appointed and therefore also provision of Section 25-G has been violated. The respondents also did not make compliance with the provisions of Section 25-F prior to terminating

the services of the petitioner. The petitioner has already produced documents such as order dated 31.10.93 and 27.10.95, letter dated 16.10.95 and medical certificate dated 10.10.92 which have not been considered by the Labour Court.

On the other hand, Shri D.C. Sharma, learned counsel for the respondents argued that the present one being a writ of certiorari, the award impugned is open to challenge only if findings are found to suffer from any error apparent on the face of record. The learned Labour Court was well within its jurisdiction in evaluating the evidence and the present petitioner cannot be allowed to argue as if it were a remedy of appeal. The learned Labour Court has meticulously considered the evidence in all respects and recorded findings of fact and those findings in exercise of writ jurisdiction cannot be interfered with. A perusal of Annex.2 would make it clear that petitioner was not appointed on the post of Beldar on 27.9.91, he was only a daily rated workman w.e.f. 16.7.90. According to his year wise working which has been given by the respondents in their reply to the

statement of claim, it is evident that the petitioner did not work for 240 days. The petitioner has failed to place any record any evidence to the contrary, and he miserably failed to prove that he worked for more than 240 days. When the petitioner left job and did not join, he was served with the notice and when he still did not turn up, he was served with another notice. Thus, it has been contended that in these circumstances, the award passed by the Labour Court did not suffer from any error so as to call for interference by this Court.

Having considered the arguments of learned counsel for the parties and the material on record, I do find that the learned Labour Court noted the fact that when the petitioner was called upon to join his duties, he did not turn up. He was served with two notices requiring him to attend his duties and if he still did not turn up to attend, he cannot complain violation of Section 25-F of the Industrial Disputes Act. As far as respondents are concerned, they have already placed on record work details of the petitioner in their reply to the statement of claim but the petitioner failed to prove by leading any

evidence the fact with regard to completing 240 days in the service of the respondents in immediately preceding calendar year. The learned Labour Court has also referred to at least three judgments of this Court wherein it has been held that an employee who is habitually absent, no enquiry was needed nor any notice is required to be served and any departmental action taken. The law with regard to onus of proof on the question of violation of Section 25-F has since undergone major change. Their Lordships of the Supreme Court in several judgments delivered in the recent past have evolved that mere affidavit of the workman regarding his working of 240 days would itself be no evidence and the workman would be required to prove this fact by specific evidence in this regard. In the face of the fact that the respondents have given working details of the petitioners in Para 2 of the reply to the statement of claim and that petitioner could not prove by leading any evidence that the work details given by the management were not correct. The fact that notices were given to the petitioner calling upon him to join back and he did not

come to attend duties clearly reflects that it was not simply a case of removal but was that of abandonment. The petitioner also could not dislodge this assertion and the fact that he abandoned the job on his own. The respondents by leading ample evidence and production of the aforesaid two notices at least discharged their part of onus of proof in a limited way which the petitioner was required to then dis-prove. He having failed to do so, the conclusion arrived at by the learned Labour Court cannot be said to be perverse or erroneous.

In my considered view, therefore, the impugned award passed by the Labour Court does not suffer from any error apparent on the face of record or perversity.

The writ petition being devoid of merits is liable to be dismissed and is accordingly dismissed but with no order as to costs.

(MOHAMMAD RAFIQ),J.

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