

BEFORE

HON'BLE MR JUSTICE B.K.SHARMA

Heard Mr S N Sarma, the learned senior counsel assisted by Mr A Zahid, the learned counsel for the petitioner. Also heard Mr S Banik, the learned counsel representing the respondent No.2, Workman.

This writ petition is directed against the Award dated 14.2.2002 passed by the learned Labour Court, Dibrugarh answering the particular Reference in favour of the workman with the direction to reinstate the workman in service with full back wages. While doing so the termination of the service of the workman w.e.f. 1.1.2000 has been held to be void and illegal.

The Reference in respect of which the impugned Award has been passed is as follows:-

1(a) Whether the management of Asiatic Oxygen Acetylene Co. Ltd., Tinsukia are justified in terminating the services of Shri Sanjoy Ghosh with effect from 1.1.2000 for Company's financial hardship?

(b) If not, whether the workman is entitled to get his compensation and any other benefit in lieu thereof ?

The moot question which arose for consideration of the learned Labour Court was as to whether the appointment letter bearing No. AOA/BTN/SKC/01 dated 11.9.1994 was in fact issued by the Management. While according to the workman, the said appointment letter was issued by one Shri SK Choudhury, the then Branch Manager of the Management but according to the Management no such appointment letter was issued. It is the stand of the Management that the said appointment letter was shown to be issued by said Shri SK Choudhury at a later point of time, when he was no longer in the service of the Management.

To prove the aforesaid assertion, the Management had produced various documents/registers to show that no such appointment letter was in the file and also that the name of the workman did not appear in any of the said documents/registers, including the attendance register, ESI contribution documents, PF deduction documents etc. When the workman was pointed out about the said state of affairs, during the course of the cross examination, his answer was that although ESI and PF documents were made for others but no such deductions had been made from him for which he had raised objection.

According to the Management, the workman was in temporary service on need basis during the period 1997 to 1999 and when his service was no longer required, he was not continued in such temporary services.

The learned Labour Court however has held that non appearance of the workman's name in the records of the Management Company did not ipso facto prove that Exhibit-A appointment letter was a forged document.

Mr Sarma, the learned counsel for the petitioner submits that the aforesaid findings of the learned Labour Court is utterly perverse inasmuch as the Management could not have done anything more to prove that the appointment letter was not genuine and was prepared through forgery inasmuch as had there been a case of genuineness, there would have been reflection of the same in the related service records of the workman.

On the other hand, Mr Banik, the learned counsel representing the workman submits that when the workman had produced the appointment letter it was incumbent on the part of the Management to prove the same to be wrong instead of referring to the related service records.

I have very carefully considered the submissions made by the learned counsel for the parties and have also perused the entire materials on record including the records received from the Tribunal. On perusal of the same what is found is that during the relevant period the name of the workman did not appear in the attendance register and also the documents relating to ESI and PF Contribution. It was on that count the Management had argued that the particular appointment letter was issued by the earlier Manager unauthorisedly that too after demitting his office.

Considering all the aspects of the matter, in my considered opinion, the matter requires re-consideration by the learned Labour Court and, if needed, the parties

s may be allowed to produce fresh evidence.

In view of above, the impugned Award dated 14.2.2002 passed by the learned Labour Court, Dibrugarh in Reference Case No.9/01 stands set aside and quashed. The matter now is remanded back to the said Court for fresh disposal in terms of this judgment and order. For expeditious disposal of the matter it is hereby provided that the parties will appear before the learned Labour Court on 3rd of May, 2013.

The Registry shall transmit the case record immediately.

The writ petition is disposed of.