NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 7422 of 2011

Smt. Samarin Bai W/o Shri Munnilal, aged about 41 years, R/o Irrigation, Rampur Korba, Tahsil and District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Water Resources Department, D.K.S. Bhawan, Raipur (C.G.)

2. Executive Engineer, Hasdeo Baraj Jal Prabandh Division, Rampur, Korba, District Korba (C.G.)

3. Sub-Divisional Officer, Hasdeo Barradge Jalprabandh, Sub-Division Darri, Korba (C.G.)

---- Respondents

For Petitioner : Mr. Vinod Deshmukh and Mr. K.P.S. Gandhi, Advocates.
For Respondents/State : Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/07/18

1. This writ petition is directed against the award passed by the Labour Court on 25.03.2010 (Annexure – P/1) by which the said Court has answered reference in negative.

2. Mr. Vinod Deshmukh, learned counsel for the petitioner would submit that the Labour Court has committed legal error in answering the reference in negative as the petitioner workmen has clearly proved that she had worked for a continuous period of 240 days in one calendar year preceding the date of termination and the finding recorded are perverse and contrary

to law.

3. Per contra, Mr. Ashish Surana, learned Panel Lawyer appearing for State would oppose the submissions made by learned counsel for the petitioner and would support the impugned order.

4. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the records with utmost circumspection.

5. At this stage, it would be appropriate to notice Section 25-B, 25-F & 25-G of the Industrial Disputes Act, 1947 (henceforth "ID Act, 1947"), which state as under:-

> "**25-B. Definition of continuous service.**- For the purpose of this chapter.-
>
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
>
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
>
> (a) for a period of one year, if the workman, during a period or twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
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> *(i)* one hundred and ninety days in the case of a workman employed below ground in a mine; and
>
> *(ii)* two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five years, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

25-F. Condition precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette].

25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, 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 workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

6. Onus to prove 240 days' continuous service, lies on workman (See

State of M.P. Vs. Arjunlal Rajak[1]).

7. Burden to prove that workman worked for continuous period of 240 days in a year lies on the workman so as to entitle him to benefit of Section 25-F of the ID Act, 1947 (See ***Krishna Bhagya Jal Nigam Ltd. v. Mohd. Rafi[2]***).

8. The Supreme Court in the matter of **State of Punjab Vs. Bhag Singh[3]** has held as under:-

> "6. Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union[4] observed: The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley Ltd. v. Crabtree[5]* it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision -taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other word, a speaking-out. The "inscrutable fact of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

9. Very recently, the Supreme Court in the matter of **Mohd. Ali v. State of H.P. and others[6]**, dealing the similar issue emphasized the need for working 240 days in one calendar year preceding the date of termination

1 (2006) 2 SCC 711
2 (2006) 9 SCC 697
3 (2004) 1 SCC 547
4 (1971) 1All ER 1148
5 1974 ICR 120 (NIRC)
6 2018(5) SCALE 717

held as under:-

> "9. It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.
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> 12. Further, it is an admitted position that though the appellant worked as such till 1991 under different work/schemes i.e. Rabi and Kharif and completed 240 days in a calendar year only during the years 1980, 1981, 1982 and 1986 to 1989 but he worked only for 195 days in the year 1990 and 19.5 days in the immediate preceding year of his dismissal which is below the required 240 days of working in the period of 12 calendar months preceding the date of dismissal, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the Act and Division Bench of the High Court was right in dismissing the appeal of the present appellant. "

10. Reverting to the facts of the present case, the Labour Court, on appreciation of documents Exhibits - P/1 to P/8, has clearly recorded a finding that the petitioner has failed to establish on record that she had worked for a continuous period of 240 days in one calendar year preceding the date of termination i.e. 28.02.1995. I have also gone through the

documents Exhibits – P/1 to P/8 and clearly of the opinion that the Labour Court has rightly held that the petitioner has failed to establish that she had worked for a continuous period of 240 days in one calendar year preceding the date of termination and the finding recorded by the Labour Court is based on correct appreciation of material available on record. As such, I do not find any merit in the writ petition.

11. Accordingly, with the aforestated observation, the writ petition deserves to be and is hereby dismissed with no order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge

Priyanka