(2018) 07 CHH CK 0373

Chhattisgarh High Court

Case No: WPL No. 190 Of 2013

State Of Chhattisgarh		APPELLANT
	Vs	
Labour Court, Rajnandgaon And Ors		RESPONDENT

Date of Decision: July 31, 2018

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25B, 25F, 25G

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: P. K. Bhaduri, Shikhar Sharma

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. This writ petition is directed against the award passed by the Labour Court on 08.02.2013 (Annexure - P/1) by which the said Court has directed

the petitioner / State for reinstatement of respondent No. 2 / workmen without back-wages.

2. Mr. P. K. Bhaduri, learned counsel appearing for the petitioner / State would submit that the order passed by learned Labour Court is unsustainable

and bad in law and deserves to be set aside.

3. Mr. Shikhar Sharma, learned counsel appearing for the respondent No. 2, on the other hand, would oppose the submissions made by learned

counsel for the petitioner and support the order impugned and submit that W.P.(L) No. 190 of 2013 petitioner had worked for a continuous period of

240 days in one calendar year preceding the date of termination.

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-

(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 W.P.(L) No. 190 of 2013 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 (2006) 2 SCC 711).

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 (2006) 9 SCC 697).

8. The Supreme Court in the matter of State of Punjab Vs. Bhag Singh (2004) 1 SCC 547 has held as under:-

6. Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union (1971) 1All ER 1148 observed: The giving of

reasons is one of the fundamentals of good administration."" In Alexander Machinery (Dudley Ltd. v. Crabtree 1974 ICR 120 (NIRC) 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 2018(5) SCALE 717, dealing the similar issue emphasized

the need for working 240 days in one calendar year preceding the date of termination 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.

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 and perusal of the award, it is quite vivid that the Labour Court has categorically recorded a finding that

the respondent No. 2 / Workmen has worked for 240 days in a calendar year preceding the date of termination. The finding of fact is based on the

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).