
Officer In Charge Vs Laxmi Bai

Writ Petition No. 16610 of 2014

Court: Madhya Pradesh High Court

Date of Decision: July 20, 2015

Acts Referred:

Constitution of India, 1950 - Article 226#Industrial Disputes Act, 1947 - Section 10, 10(1), 12, 12(5), 17

Citation: (2015) 3 LLN 480

Hon'ble Judges: S.K. Gangele, J

Bench: Single Bench

Advocate: Sanjay Dwivedi, Learned Counsel, for the Appellant; Uttam Maheshwari, Learned Counsel, Advocates for the Respondent

Final Decision: Dismissed

Judgement

S.K. Gangele, J

The petitioner has filed this petition against the award dated 4.7.2014 by which the labour court has awarded a

compensation of Rs. 1 lac in lieu of reinstatement after holding that the termination of the respondent was in violation of Section 25-F of the

Industrial Dispute Act 1947 (in short "the Act of 1947"). The petition is listed on an application filed by the respondent in regard to non compliance

of Section 17 of the Act of 1947 and some of the petitions are listed on admission. The court has issued notices on admission. Looking to the

nature of the dispute with the consent of the parties, the petition is heard on admission.

2. The appropriate Government vide order dated 14.7.2005 in exercise of powers under Section 10(1) of the I.D. Act 1947 referred the dispute

to the labour court for adjudication that whether the termination of service of respondent, Smt. Laxmi bai was proper or not and what relief she

was entitled for.

3. Before the Labour Court the respondent pleaded that she was engaged as labour in the year of 1978 and her services were terminated in the

year of 1992 without payment of any retrenchment compensation by an oral order. Before termination of her services, no notice was issued to her

neither any enquiry was conducted by the authority. The petitioner pleaded that the respondent did not work for 240 days in a calendar year and

the provisions of Industrial Disputes Act were not applicable in the establishment of the petitioner. The labour court after appreciation of the

evidence has held that the petitioner institute was engaged in regard to search on forests. The trees were planted in the establishment of petitioner

and they were sold also, hence the provisions of I.D. Act were applicable. In my opinion, the findings recorded by the labour court in this regard

are in accordance with law. The respondent has specifically pleaded that she was engaged in the year of 1978 and disengaged in the year of 1992

by an oral order and she worked continuously. She also filed an application for production of documents in regard to attendance register of the

respondent. The Labour Court vide order dated 9.3.2007 directed the petitioner to produce the relevant documents but in spite of that no

documents were produced before the labour court. Only photocopies were produced. The witness of the petitioner stated that he can not say that

how many days the respondent had worked. After considering the oral and documentary evidence, the labour court has held that the respondent

had worked 240 days in a calendar year and her termination of service was contrary to law.

4. The ground was also taken before the labour court that the dispute was not maintainable because it was raised after a long period of twelve

years and that has been negatived by the labour court.

5. Learned counsel for the petitioner has contended that no relief can be granted in favour of the respondent because the dispute was raised after a

period of twelve years, hence the appropriate Government has committed an illegality in referring the dispute. In support of his contention, learned

counsel for the petitioner has relied upon the Full Bench Judgment of this court reported in Dy. C.M.E. Sub Area Manager Vs. Union of India

(UOI) and Others, (2008) 116 FLR 421 : (2007) ILR (MP) 1187 : (2008) 2 JLJ 85 : (2008) 1 LLJ 312 : (2008) 1 MPHT 28 : (2008) 1 MPLJ

60 . The full bench has answered the reference in the aforesaid case and held as under:-

23. On the aforesaid analysis of the provisions of Sections 10(1) and 12(5) of the Act as well as the principles laid down by the Supreme Court in

various cases, we are of the considered opinion that a belated claim giving rise to an industrial dispute can be referred by the appropriate

Government under section 10(1) of the Act if the appropriate Government finds that the industrial dispute exists at the time of making the reference

notwithstanding the fact that the claim is belated and such an order passed by the appropriate Government under section 10(1) of the Act cannot

be interfered with by the High Court under Article 226 of the Constitution on the ground that the reference is incompetent or without jurisdiction.

But at the same time, the appropriate Government while exercising its wide discretion under sections 10(1) and 12(5) of the Act may refused to

refer an industrial dispute which exists but which has become stale if it is not expedient to refer the same as this would be a relevant circumstance

while examining the question whether a case for reference is made out or not for industrial adjudication. There are the conclusions we have arrived

at on examining various decisions of the Supreme Court under section 10 and 12 of the Act discussed above and we answer the reference

accordingly.

Since we have answered the reference which has been made to us, the case will now be placed before the appropriate Bench for hearing on

merits.

6. The Full Bench has clearly held that appropriate Government can refer the belated claim also for adjudication and it can also refuse to refer the

same if the Government comes to conclusion that whether the case for reference is made out or not. In the present case the appropriate

Government referred the dispute for adjudication. The petitioner did not challenge the aforesaid reference in any independent writ petition. The

petitioner participated before the labour court and when the award was passed and order for payment of compensation in favour of the respondent

is given, then the petitioner challenged the award and also raised the ground that the appropriate Government has committed an error in making the

reference.

7. As per Full Bench Judgment of this court the appropriate Government has power and authority to make a reference even though there was a

delay and in the present case the petitioner participated before the labour court, hence the petitioner can not claim that the reference made by the

appropriate Government was not proper on the principle acquisition and its conduct.

8. The labour court has only awarded a compensation of Rs. 1 lac in favour of respondent in lieu of reinstatement, in my opinion, the labour court

has already taken care of the fact that the there was delay in making the reference, hence the labour court has not ordered reinstatement. Neither

any back wages has been awarded in favour of the respondent. The court has awarded compensation of Rs. 1 lac in favour of the respondent

because her termination of service was in violation of Section 25-F of the Act of 1947.

9. Looking to the facts of the case, the labour court passed the just and proper award, hence I do not find any merit in this petition. It is hereby

dismissed.

10. The petitioner shall comply the award within a period of three months from the date of receipt of copy of this order.

11. No order as to costs.

12. Cc as per rules.