HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 1243/2016

Giriraj S/o Kanwarlal Suman,

----Petitioner

Versus

1. Regional Forest Officer,
2. District Forest Divisional Officer,

----Respondents

For Petitioner(s)	:	Mr. Ritesh Kumawat for Mr. Abdul Kalam Khan
For Respondent(s)	:	

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

29/11/2024

1. Instant civil writ petition under Article 227 of the Constitution of India has been filed by the petitioner way back on 20.01.2016, impugning the award dated 14.09.2015, passed in LCR Case No.62/2004 by the Labour Court, Kota, Rajasthan, deciding the reference against the petitioner-workman with observation that petitioner-workman could not prove that he had worked for 240 days in a calendar year with the Respondent-Department.

2. Heard learned counsel for the petitioner and perused the record.

3. Having perused the record, it appears that the petitioner raised a dispute that he was appointed as Watchman by the Respondent-Department**,** on 11.03.1997 and he continued to work from 11.03.1997 to 31.03.1998, but from 01.04.1998, he was terminated from service. On raising such dispute and after failure

of re-conciliation, reference was made to the Labour Court in following terms:-

> "(1) क्या श्रमिक श्री गिरिराज सुमन पत्र श्री कंवरलाल सुमन द्वारा सेवा समाप्ति के पूर्व एक वर्ष में 240 दिन कार्य किया था?
> (2) क्या नियोजक (1) जिला वन मण्डल अधिकारी, झालावाड़ (2) क्षेत्रीय वन अधिकारी, गिन्दोरी नर्सरी झालावाड़ द्वारा श्रमिक को अवैध रूप से दिनांक 1/4/98 को सेवा से पृथक किया गया है? यदि हां तो प्रार्थी श्रमिक किस राहत को पाने का हकदार है?"

4. It appears that before the Labour Court, petitioner submitted statement of claim, which was replied by the respondents. Both parties were allowed to adduce their respective evidences. After recording evidences of both parties, the Labour Court considered the reference on merits and recorded a fact finding that the petitioner rendered services only for a period of 131 days, hence there is no violation of Sections 25F, 25G and 25H of Industrial Disputes Act, 1947 (for short "ID Act, 1947"). Further the Labour Court also observed that the appointment of petitioner-workman as Watchman was contractual based and covered under the provisions of Section 2(oo)(bb) of ID Act, 1947.

5. Learned counsel for the petitioner failed to point out any illegality, perversity or jurisdictional error in the fact findings recorded by the Labour Court in the impugned award which have been recorded, after appreciation of respective evidence of both parties. The evidence adduced by the petitioner-workman falls short to establish discharging of duties for a period of 240 days in a Calendar year. Moreover, the contractual appointment of

petitioner was held to be governed by the provisions of Section Section 2(oo)(bb) of ID Act, 1947.

6. It is settled proposition of law that onus to prove his case lies upon the workman. The contention of learned counsel for the petitioner that an adverse inference ought to have been drawn against the respondent-employer due to non-production of the record, cannot be countenanced in view of the following proposition of law.

7. The Hon'ble Apex Court in case of **Range Forest Officer Vs. S.T. Hadimani [(2002) 3 SCC 25]**, set aside the award of Labour Court. The Labour Court, in the impugned award had concluded that workman had worked for 240 days and his services had been terminated without paying him any retrenchment compensation. The claim of workman was repatriated by the employer. The Hon'ble Supreme Court in such facts and situation, held and observed that it is for the claimant and workman to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as a sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had in fact worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record for appointment or engagement for this period was produced by the workman.

8. In the case at hand, petitioner has not produced any supportive evidence or record to prove his working for 240 days in a year, which too has been countered by the respondents, hence, the Labour Court has not committed any illegality and perversity

in recording findings that factum of rendering work for 240 days in a calendar year is not established, rather petitioner worked out for 131 days.

9. In an another case of **R.M. Yellati Vs. Asstt. Executive Engineer [(2006) 1 SCC 106]**, the Hon'ble Supreme Court reported the proposition of law that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is required to be discharged by the workman by adducing cogent evidence, both oral and documentary and mere affidavit or self serving statements of the claimant workman will not suffice to discharge such burden on the workman. It was also observed by the Hon'ble Supreme Court that the workman claimant can call upon the employer to produce before the Court, the nominal muster roll for the given period, letter of appointment or termination, if any, the wage register, the attendance register etc. When the workman could not discharge his onus, mere non-production of muster roll per see without any plea of suppression by the claimant workman will not be a ground for the Tribunal to draw an adverse inference against the management. The applicability of such principle of drawing an adverse inference will depend upon the facts of each case.

10. The ration decidendi expounded by the Hon'ble Supreme Court in case of **R.N. Yellati (supra)** has been followed by the Coordinate Bench of the Rajasthan High Court in case of **Chairman, Municipal Board Vs. Mahavir Prasad Sharma [RLW 2007(3) Raj. 1999 ; MANU/RH/0078/2007]** wherein the award passed in favour of workman was set aside. Applying the principle of law that mere production of the affidavit by the

workman is not sufficient and non-production of the record by the Management will not allow the Court to draw an adverse inference against the management.

11. The Delhi High Court in case of **Dhara Vs. Presiding Officer [2007 141 DLT 104]**, following the principle of law expounded by the Hon'ble Supreme Court in case of **R.M. Yellati (supa)** declined to draw an adverse inference against the management for non-production of muster roll, when the petitioner admitted that he had never summoned the relevant muster roll himself nor he had taken any plea of suppression of such recourse by the management. Further merely on the basis of affidavits made by the workman claimant, same was not held to be sufficient evidence to establish the fact of working in 240 days in a calendar year and the award of dismissal of statement of claim of workman was affirmed.

12. In the case at hand, the factual scenario is somewhat similar since the petitioner workman has only produced his self serving affidavit in support of his claim which too has been countered from the side of respondents. No other supportive evidence or record has been produced by the petitioner nor any efforts were made to summon the record, muster roll register, attendance register, wages register etc. from the respondents have been made by the petitioner, hence, in such circumstances, plea of counsel for petitioner to draw an adverse inference against the respondent for non-production of the record cannot be accepted.

13. The fact findings recorded by the Labour Court in the impugned award, are based on appreciation of evidence. Counsel

for petitioner could not point out any perversity or jurisdictional error in the impugned award.

14. The jurisdiction under Article 227 of the Constitution of India is limited to examine the perversity in the order or jurisdictional error or the order has been passed in patent illegality or suffer from vice of arbitrariness, which leads to injustice. The jurisdiction is not akin to the Appellate Court. In support thereof judgment delivered by the Hon'ble Supreme Court in case of **Estralla Rubber Vs. Dass Estate (P) Ltd. [2001 (8) SCC 97],** explaining the scope of jurisdiction under Article 227 of the Constitution of India as under:-

> "The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to."
>
> *(emphasis supplied)*

15. For the aforesaid reasons, impugned order does not call for any interference by the High Court, in exercise of jurisdiction under Article 227 of the Constitution of India. Therefore, instant writ petition is hereby dismissed.

(SUDESH BANSAL),J

TN/73