IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 3rd OF FEBRUARY 2023

WRIT PETITION No.3056 of 2001

BETWEEN:-

1. **EXECUTIVE DIRECTOR, ENVIRONMENTAL PLANNING AND COORDINATION ORGANISATION (MP), PARYAVARAN PARISAR, E-5, ARERA COLONY, BHOPAL.**
2. **MEMBER SECRETARY, ENVIRONMENTAL PLANNING AND COORDINATION ORGANISATION (MP), (RURAL) THROUGH APS UNVERSITY, REWA.**

.....PETITIONERS

(BY SHRI SAMDARSHI TIWARI - ADVOCATE)

AND

1. **PRESIDING OFFICER, LABOUR COURT, REWA (MP)**
2. **JAGDISH PRASAD SAHU S/O VANSHMATI SAHU, VILLAGE DEVRA FARENDRA P.O. MANEKVAR, DISTRICT REWA (MP)**

.....RESPONDENTS

(NONE FOR RESPONDENT NO.1)

(RESPONDENT NO.2 BY SHRI K.C. GHILDIYAL – SENIOR ADVOCATE WITH SHRI MANOJ RAJAK – ADVOCATE)

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Reserved on : 05.01.2023

Pronounced on : 03.02.2023

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This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Since pleadings are complete and learned counsel for the parties are ready to argue the matter, therefore, it is heard finally.

2. By means of this petition filed under Article 226/227 of the Constitution of India, the petitioners are questioning the legality, validity and propriety of the award dated 07.03.2001 (Annexure-P/6) passed by respondent No.1/Presiding Officer, Labour Court, Rewa, whereby they were directed to reinstate respondent No.2 in service with full back-wages.

3. Brief facts of the case as to comprehend the dispute are that that the petitioner No.1 is an Executive Director whereas petitioner No.2 is a Member Secretary in the society known as Environmental Planning and Coordination Organisation (EPCO) registered under M.P. Society Rajistrikaran Adhiniyam, 1973, which was formed for formulating environmental studies at national level in order to seek development without destruction. The further objective of the said society was for creating awareness with regard to environment in the public at large. Within a year of formation of the said society, a need was felt to have a rural division of EPCO so as to study the rural environment and, therefore, a rural division of the EPCO was set up in APS Univeristy, Rewa for the reason that the said University was the only University in the State of MP having a department dedicated for environmental biology as also taking into account the fact that the said University expressed its keenness to deal with matters pertaining to rural environment in collaboration with EPCO.

(3.1) As per the averments made in the petition, EPCO (Rural) has a

regular set up of only five persons and further men power required for its different projects on project basis as per the requirement of specific project. As per the petitioners, looking to their project need, respondent No.2/workman was appointed as a Chowkidar in the month of January, 1989 whose services were terminated by the petitioners by an oral order in the month of June, 1990. Before terminating the services of respondent No.2, neither any notice nor one moth's salary in lieu thereof was given to him. It is also stated that respondent No.2 was also not paid any retrenchment compensation. After his removal from service, respondent No.2 had raised an industrial dispute and finally that dispute was referred by the Labour Commissioner, Jabalpur Division, Jablapur vide its letter dated 03.07.1993 to the Presiding Officer, Labour Court, Rewa to determine the following question:-

> ''क्या श्री जगदीश प्रसाद साहू पिता श्री वंशपति प्रसाद साहू निवासी ग्राम देवरा परेंदा पोस्ट मनिकवार जिला रीवा म.प्र. का सेवा पृथकीकरण वैध एवं उचित है? यदि न तो वे किस सहायता के पात्र है एवं इस संबंध में नियोक्ता को क्या निर्देश होना चाहिए।''

(3.2) In the proceeding pending before the Labour Court, Rewa, petitioner No.2 not only submitted its reply denying the averments made in the statement of claim of respondent No.2, but also taken a stand that the appointment of respondent No.2 was not made on the post of Chowkidar whereas looking to the project need, he was engaged as a labour. As per the stand taken by the petitioners before the Labour Court, since the appointment of respondent No.2 was not made on regular basis, but he was kept for performing the duties looking to their project need, therefore, no order for his removal from service was required to be passed and as such, there was no need to pay any retrenchment compensation to him. However, it was stated that the conduct of respondent No.2 was neither satisfactory nor he was sincere towards his duties. It was also stated that

on a sudden inspection made on 27.06.1990, since respondent No.2 was found absent from his duties, therefore, he was removed from service.

(3.3) After filing of reply, the petitioners never appeared before the Labour Court, therefore, an *ex parte* statement of respondent No.2 got recorded in which he very categorically stated that on the vacant post of Chowkidar, he was given appointment in the month of January, 1989 and since then, he was continued on the said post in the department and performed his duties satisfactorily. He had also stated that in the department though he worked for more than 240 days continuously, but no retrenchment compensation was paid to him. In support of his submission, respondent No.2 had filed various documents along with his pay-slip issued by the University. He had also stated before the Labour Court that after his removal from service, he is unemployed.

(3.4) Since respondent No.2 was never cross-examined, therefore, Labour Court had no other option but to believe the statement made by him. Ultimately, the Labour Court relying upon the statement of respondent No.2 and the judgments placed before it, passed the impugned award observing therein that appointment of respondent No.2 was made on the post of Chowkidar and without issuing any order or without making any payment of retrenchment compensation, he was removed from service and from the date of his removal he was unemployed. The Labour Court had also observed that to determine the questions of removal and unemployment during the period of ousted from service, the onus lies upon the employer to prove the same, but since the employer failed to produce any evidence, therefore, it is presumed that respondent No.2, after his removal from service, was unemployed and had no other earning source till the date of his removal from service and as such, he is entitled

to get back-wages. Finally, the Labour Court, holding the removal of respondent No.2 from service illegal, directed for his reinstatement in service with full back-wages, hence this petition.

4. Shri Tiwari, learned counsel for the petitioners has contended that the establishment in which respondent No.2 was engaged has been closed down and, therefore, order of his reinstatement is illegal. He has also contended that respondent No.2/workman had not produced any document before the Labour Court to prove that he worked for more than 240 days continuously in one calender year. He has also submitted that there was no enquiry conducted by the Labour Court to determine whether the workman was unemployed or was engaged during the period when he remained out from service and as such, granting back-wages to respondent No.2 is purely illegal. In support of his submissions, he has placed reliance upon several decisions of Supreme Court viz. **(1992) 4 SCC 99 [Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others]; (1996) 7 SCC 562 [State of H.P. Vs. Suresh Kumar Verma and another]** and **(2006) 4 SCC 733 [U.P. SRTC Ltd. Vs. Sarada Prasad Misra and another]**.

5. On the other hand, Shri Ghildiyal, learned Senior Counsel appearing for respondent No.2 has submitted that though this petition has been filed under Article 226/227 of the Constitution of India, but as per the relief clause, it can be gathered that this petition is mainly under Article 227 of the Constitution of India and while exercising the power of superintendence, the scope of interference in the impugned award is very limited. He has further submitted that though the award was passed *ex parte*, but the petitioners never made any attempt to get the same set aside. He has also submitted that the petitioners in their reply (Annexure-P/5)

filed before the Labour Court had admitted that respondent No.2 was engaged in service in the month of January, 1989 as a labour. He has submitted that in paragraph-6 of the reply, the petitioners had admitted that before removing respondent No.2 from service, no notice was given to him because according to the petitioners, it was not required. He has submitted that the petitioners had also admitted that no retrenchment compensation was paid to respondent No.2. He has also submitted that the petitioners in paragraph-13 of their reply had also admitted that the organization in which respondent No.2 was engaged, the provisions of Industrial Dispute Act, 1947 (in short the 'Act, 1947') are not applicable. Shri Ghildiyal has submitted that on the date of filing reply before the Labour Court, there was no pleading and stand taken by the petitioners that the organization in which respondent No.2 had been engaged was closed down. He has submitted that though in their reply, the petitioners had taken a stand that on the date of inspection, respondent No.2 was absent from his duties and, therefore, he was removed from service because his performance towards his duties was not found up to the mark and under such circumstances, the petitioners were under obligation to give notice to respondent No.2, but that was not done. He has submitted that the conduct of the petitioners can be considered to be very careless because after filing reply to the claim raised by respondent No.2/workman, they did not participate in the further proceeding and even after passing the *ex parte* award they did not move any application for setting aside the award. He has submitted that the organization in which respondent No.2 was engaged is still working and in fact, no such document was ever produced by the petitioners showing that since the organization is being closed down, therefore, they removed respondent No.2 from service but on the contrary, showing some other reasons, they terminated respondent

No.2 from service. He has submitted that even in their reply, no stand about closure of organization was taken by the petitioners. He has submitted that even otherwise, the petition is liable to be dismissed on the ground that the petitioners never complied with the provisions of the Act, 1947. To bolster his contention, learned Senior Counsel has placed reliance upon several decisions of Supreme Court viz. **(2007) 2 SCC 433 [J.K. Synthetics Ltd. Vs. K.P. Agrawal and another]; (2013) 10 SCC 324 [Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others]** and **(2014) 6 SCC 434 [Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Limited and another]**.

6. Considering the rival submissions of learned counsel for the parties and on perusal of record available, it is clear that the finding given by the Labour Court cannot be said to be perverse and illegal for the reason that the same was based upon the statement of respondent No.2/workman recorded before the Presiding Officer, Labour Court. Since there was no rebuttal as the petitioners were failed to avail the opportunity of cross-examination and also to produce any evidence in their support, therefore, the Labour Court accepted the material whatever produced by respondent No.2/workman before it. Respondent No.2 in his statement had very categorically stated that after removal from service, he remained unemployed and as such, there was no reason for the Labour Court to go contrary to that or to make any enquiry in that regard because that fact was not disputed and in absence of any dispute raised by the petitioners, there was no reason with the Labour Court to disbelieve the statement of respondent No.2.

7. In the case of **Delhi Development Horticulture Employees' Union** (supra), the Supreme Court has observed that regularizing the

services in a temporary government scheme for providing employment on daily-wages basis for rural poor for a limited period is not proper. In the said case, the Supreme Court has also observed that the appointment made against the post which was not sanctioned or against the sanctioned strength of the post available, in such cases, regularization is not proper. However, the said case is not applicable in the present case for the reason that the facts of that case are not similar to the case in hand. Here respondent No.2 is not claiming regularization, but challenging his termination on the ground that the same was contrary to the provisions of the Act, 1947. According to respondent No.2, his removal was nothing but a retrenchment and that was illegal because before doing so, mandatory requirements have not been followed. Even otherwise, the petitioners, in the present case failed to establish that the appointment of respondent No.2 was not made against any vacant post and on the contrary, respondent No.2 not only in his statement of claim, but also in his statement recorded before the Presiding Officer had stated that his appointment was made against the vacant post of Chowkidar and as such, the case as relied by learned counsel for the petitioners will not provide any help to him.

8. In the case of **Suresh Kumar Verma** (supra) on which learned counsel for the petitioners has placed reliance, the Supreme Court has observed that if service of an employee is terminated who was appointed as a daily wager, *de hors* the rules not for accommodating another temporary employee but due to completion of the project then relief for re-employment could not be granted, but here in this case, the case was set up by respondent No.2 by raising an industrial dispute claiming therein that he being a workman worked for more than 240 days continuously, if required to be terminated or removed from service, certain mandatory

requirements as provided under the provisions of the Act, 1947 were required to be followed. From the reply filed by the petitioners, it is clear that respondent No.2 was not sincere towards his duties and on a sudden inspection, he was found absent from duties and, therefore, because of his unsatisfactory performance, he was removed from service. Under such circumstances, a notice in advance or retrenchment compensation was a mandatory requirement, but that requirement had not been fulfilled, therefore, the Labour Court in its award had held that such retrenchment/removal of respondent No.2 cannot be held to be valid and set aside the same, directing the petitioners to reinstate respondent No.2 with full back-wages. It is also not a case in which reinstatement was ordered despite knowing the fact that the organization in which workman is to be reinstated, has already been closed down. Before the Labour Court, there was no such occasion to consider this aspect because even in the reply submitted by the petitioners on 15.12.1998, no such stand was taken by them. Even before this Court during the course of arguments nothing has been produced except the oral submission of learned counsel for the petitioners that the organization in which respondent No.2 was engaged is completely closed down but on the contrary, this fact has been disputed by learned counsel for respondent No.2 saying that the organization in which respondent No.2 was engaged, is still continue and statement of closing down the EPCO is incorrect. Under such circumstances, this Court has no reason to believe the statement of the petitioners and as such, the case of **Suresh Kumar Verma** (supra) has no application in the present case.

9. In the case of **Sarada Prasad Mishra** (supra), the Supreme Court after dealing with the back-wages and the situation when it could be

granted has observed that granting back-wages cannot be dealt with any straight jacket formula because it is decided on the basis of facts of each and every case. The Supreme Court has also observed that reinstatement does not mean the entitlement of claiming back-wages. The Supreme Court in the said case says that while granting the relief of back-wages, the Court has to see and consider all relevant circumstances existing in the case, but here in this case, it is very material to see the manner in which, the petitioners contested the dispute raised by respondent No.2/workman. The petitioners after filing of reply to the statement of claim never appeared before the authority nor adduced any evidence. The petitioners in their reply had never uttered a single word that the stand taken by workman/respondent No.2 about his unemployment after his termination is false. Since the pleadings and material produced by the workman before the Labour Court was not controverted, therefore, the award passed by the Labour Court cannot be said to be based upon perverse finding and, therefore, the case of **Sarada Prasad Mishra** (supra) has no application in the case at hand.

10. So far as the submission made by learned Senior Counsel saying that this petition is even otherwise under Article 227 of the Constitution of India and scope of interference in a matter of 227 especially when the award of Labour Court is under challenge is very limited and the same can only be done under the circumstances when the Court finds any jurisdictional error or serious error of law apparent on record or judgment not based on evidence is concerned, he relied upon the case of **Iswarlal Mohanlal Thakkar** (supra) in which the Supreme Court after dealing with the scope of interference in the matter of award passed by the Labour Court in a supervisory jurisdiction of a writ filed under

Article 227 of the Constitution of India has observed as under:-

> "**15.** We find the judgment and award of the Labour Court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.
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> **19.** Therefore, in view of the above judgments we have to hold that the High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the award of the Labour Court. A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per Section 35 of the Evidence Act, 1872 and the birth certificate mentioned the appellant's date of birth as 27-6-1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the same, instead the respondent Board prematurely terminated the services of the appellant by taking his date of birth as 27-6-1937 which is contrary to the facts and evidence on record. This date of birth is highly improbable as well as impossible as the appellant's elder brother was born on 27-1-1937 as per the school leaving certificate, and there cannot be a mere 5 months' difference between the birth of his elder brother and himself. Therefore, it is apparent that the school leaving certificate cannot be relied upon by the respondent Board and instead, the birth certificate issued by BMC which is the documentary evidence should have been relied upon by the respondent. Further, the date of birth is mentioned as 27-6-1940 in the LIC insurance policy on the basis of which the premium was paid by the respondent to the Life Insurance Corporation on behalf of the appellant. Therefore, it is only just and proper that the respondent should have relied on the birth certificate issued by BMC on the face of all these discrepancies as the same was issued on the order of JMFC.

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> **21.** The High Court has not applied its mind in setting aside the judgment and award of the Labour Court in exercise of its power of judicial review and superintendence as it is patently clear that the Labour Court has not committed any error of jurisdiction or passed a judgment without sufficient evidence. The impugned judgment and order [Paschim Gujarat Vij Co. Ltd. v. Ishwarlal Mohanlal Thakkar, Special Civil Application No. 4168 of 2002, decided on 19-4-2011 (Guj)] of the High Court deserves to be set aside and the award and judgment of the Labour Court be restored."

After taking note of the view expressed by the Supreme Court in a matter of exercising power of superintendence and comparing with the award passed by Labour Court which is in question in the present case, I do not find any jurisdictional error in the impugned award and it cannot be said that the same was based upon no evidence and in such circumstances, the scope of interference by the High Court in an award passed by the Labour Court is very limited.

11. In the case of **Deepali Gundu Surwase** (supra), the Supreme Court has observed that if order of reinstatement is based holding the termination illegal and it is also a case of employee that he was not gainfully employed after termination then reinstatement should be given with full back-wages. In the said case, it is also observed by the Supreme Court that the onus is upon the employer to prove that after removal, the employee was gainfully employed. But here in this case, the said burden was not discharged by the petitioners despite the fact that the employee in his statement of claim and the statement recorded before the Presiding Officer stated that after his termination he was unemployed.

12. Further, in the case of **J.K. Synthetics Ltd.** (supra), the Supreme Court has observed that granting back-wages is not an automatic or natural consequence of reinstatement, but it can be granted only when it

is pleaded by the employee that he was not gainfully employed from the date of termination and if that is pleaded, then the burden will shift upon the employer to prove that the employee was gainfully employed after his termination. As has been discussed hereinabove, though respondent No.2/workman had come-up with a specific pleading about his unemployment after his termination, but the petitioners being employer failed to discharge their burden to prove that respondent No.2 was gainfully employed after his termination and, under such circumstances, I do not find any illegality in the impugned award passed by the Labour Court to grant full back-wages to respondent No.2.

13. While granting back-wages, the length of service of an employee is required to be taken note of and at the same time, the conduct of the employer is also required to be seen. Here in this case, the petitioners though contested the matter but not shown any seriousness to dislodge the stand taken by respondent No.2/workman or to dislodge the finding given by the Labour Court. Therefore, exercising the power of superintendence under Article 227 of the Constitution of India, I am not inclined to interfere in the impugned award.

14. Thus, the petition is without any substance and it merits dismissal. Accordingly, it is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE

Devashish