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STATE OF MAHARASHTRA

v.

DATTATRAYA DIGAMBER BIRAJDAR

AUGUST 27, 2007

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[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

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Industrial Disputes Act, 1947—s. 10—Re-instatement with back wages—Claim of—Daily wager leaving employment of establishment for joining another Department and thereafter terminated from the Department—Claim for continuity of service with the first establishment—Held: There was sufficient material and evidence that claimant not in employment of first establishment and had voluntarily left to join another Department—Thus, courts below not justified in granting the claim and erred in holding that burden to prove that claimant worked for more than 240 days was on employer—Also, the claim raised was stale—Hence, order of courts below set aside.

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Respondent was working as daily wager in Public Works Division-appellant's establishment since 1984. On 10.3.1986, 52 posts of Surveyor on contract employment were created in Soil Conservation Department. By order dated 18.3.1986 respondent was appointed as Surveyor in the Soil Conservation Department and was to join from 3.4.1986. Thereafter, he was transferred to other place. Subsequently, 52 posts of Surveyor on temporary establishment were abolished and respondent was terminated from the Department. Respondent filed application under section 10 of the Industrial Disputes Act, 1947 seeking continuity of service with back wages with PWD. It was submitted that he was working in PWD till 30.4.1986 when he was orally terminated. Labour Court passed an award holding that the termination of respondent with effect from 30.4.1986 was illegal and he was to be reinstated with 25% back wages. High Court upheld the order. Hence the present appeal.

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Allowing the appeal, the Court

HELD: It is crystal clear that ample material and evidence were placed before the Labour Court to justify the stand that with effect from 3.4.1986 respondent was not in the employment of the appellant. He himself had voluntarily left the department to join another department. In any event, the claim was stale and was filed after about eight years of the alleged order of

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termination. The Labour Court and the High Court erroneously held that the burden to prove engagement of 240 days lies on the employer. Thus, the order of the Tribunal and the Award by the Labour Court as upheld by the High Court cannot be maintained and are set aside.

[Paras 6 and 7] [507-B, C, D]

Range Forest Officer v. S.T. Hadimani [2002] 3 SCC 25, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1000 of 2006.

From the final Judgment and Order dated 15.03.2004 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 444 of 2004.

Ravindra Keshavrao Adsure for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a learned Single Judge of the Bombay High Court at Aurangabad. The writ petition filed by the appellant was dismissed. Challenge in the writ petition was to the Award made by the Labour Court, Aurangabad.

2. Background facts as projected by the appellant are as follows:-

Respondent was working as a daily wager as Mukadam and was being paid Rs.30/- per day in the Public Works Division, Osmanabad, District Maharashtra since August, 1984. On 10.3.1986 the District Commissioner of Labour, Aurangabad created 52 posts of Surveyor on contract employment. Respondent joined as Surveyor in the office of Divisional Soil Conservation Officer with effect from 3.4.1986 on consolidated pay of Rs.450/- per month. On 25.9.1986 the Deputy Divisional Soil Conservation Officer transferred the respondent to Paranda with effect from 6.10.1986 to the office of Sub-Divisional and Soil Conservation Officer, Aurangabad. On 5.8.1987 Divisional Soil Conservation Officer abolished all the 52 posts of Surveyor engaged on various places as they were on temporary establishment. Accordingly, service of respondent as Surveyor came to be terminated on 20.8.1987. After about eight years, respondent submitted an application for reference in terms of Section 10 of the Industrial Disputes Act, 1947 (in short the 'Act') before Deputy Commissioner of Labour, Aurangabad. It was stated that the respondent was working in the Public Works Department, Aurangabad till

A 30.4.1986 when he was orally terminated. Prayer was made for continuity of service with back wages. The Deputy Commissioner of Labour made reference under Section 10(1) and 12(5) of the Act to the Labour Court, Solapur for adjudication. The Public Works Department, on receipt of the notice from the Labour Court made enquiries about the service particulars from the office of the Sub-Divisional Soil Conservation officer. By letter dated 9.3.1995, Sub-Divisional Soil Conservation Officer, Osmanabad, informed the Sub-Divisional Engineer that by order dated 18.3.1986 respondent was appointed as Surveyor on contractual employment, and on 25.9.1986 he was transferred to Sub-Divisional Soil Conservation Officer, Paranda. As per order of the Commissioner, Aurangabad appointments of Surveyor on temporary establishment came to an end. Respondent examined himself in support of his claim and exhibited 3 documents. One of the documents purportedly indicated that the respondent worked in the Division till 31st August, 1986. An officer of the Sub-Divisional Soil Conservation Office, Aurangabad was examined in support of the appellant's case. The Labour Court passed an award, *inter alia*, holding that (1) termination of respondent with effect from 30.4.1986 was illegal; and (2) he was to be reinstated with back wages i.e. 25% of the back wages. Challenging the aforesaid order, writ petition was filed before the Bombay High Court which was dismissed by impugned order.

E 3. Learned counsel for the appellant submitted that the approach of the Labour Court and the High Court is clearly erroneous. The effect of the documents produced i.e. Exhibits C25-C27, clearly establishing the appointment of respondent in the Soil Conservation Department, his transfer and ultimate termination has been lightly brushed aside by the Labour Court and the High Court. The respondent himself admitted that in fact the details were given by the Soil Conservation Officer in the letter dated 9.3.1995. The Labour Court has come to a conclusion that respondent had worked for more than 240 days.

G 4. Learned counsel for the appellant further submitted that there is no question of termination as the respondent voluntarily joined another department. According to him, the documents clearly established that he had joined another establishment. Therefore, the claim was stale and was made after more than eight years. The Labour Court and the High Court erroneously held that the question whether the workmen had worked for more than 240 days or not has to be established by the employer.

5. There is no appearance on behalf of the respondent.

H 6. It is to be noted that in the written statement, it has been clearly

stated by the present appellant about the respondent having left the employment of the appellant's establishment for joining another department and ultimately being terminated from the said department. Exhibit C-25 dated 10.3.1986 is the document showing place of posting, Exhibit C-26 dated 18.3.1986 shows that respondent was appointed and was required to join from 3.4.1986. Exhibit C-27 is the transfer order of the respondent by order dated 25.9.1986 and the letter dated 9.3.1995 clearly shows that the respondent had joined at Paranda at the transferred place to which he was transferred. It is crystal clear that ample material and evidence were placed before the Labour Court to justify the stand that with effect from 3.4.1986 respondent was not in the employment of the appellant. He himself had voluntarily left the department to join another department. In any event, the claim was stale and was filed after about eight years of the alleged order of termination. Labour Court and the High Court erroneously held that the burden to prove engagement of 240 days lies on the employer. The view is clearly contrary to what has been stated by this Court in *Range Forest Officer v. S.T. Hadimani* [2002] 3 SCC 25.

7. Looked at from any angle the order of the Tribunal and the Award by the Labour Court as affirmed by the High Court cannot be maintained and are set aside.

8. Appeal is allowed but without any order as to costs.

N.J.

Appeal allowed.