

A SANTURAM YADAV AND ANR.
v.
SECRETARY, KRISHI UPAJ M.S. BEMETARA AND ANR.
(Civil Appeal Nos.1750-1751 of 2010)

FEBRUARY 16, 2010

[P. SATHASIVAM AND R.M. LODHA, JJ.]

Industrial Disputes Act, 1947 – s.25F – Daily wage workers – Termination of – Claim for re-instatement – Dismissed by Labour Court on ground of failure of the workers to establish that they worked for more than 240 days continuously in one calendar year – High Court affirmed the order of Labour Court – On facts, held: Relevant documents and communications, though available with the workers, were not placed before the Labour Court and High Court – Matter therefore remitted to Labour Court to consider the claim of the workers afresh.

E Appellants were working on daily wage basis. At the threat of removal, they approached the Labour Court. A compromise was entered into between the parties in terms of which the respondent-management agreed to reinstate the appellants. The Labour Court passed award in terms of the compromise.

F The appellants were later dismissed from service. The claim laid by them for re-instatement was dismissed by the Labour Court on ground of their failure to establish that they worked for more than 240 days continuously in one calendar year. The High Court affirmed the order of Labour Court.

In appeal to this Court, the appellants stated that though they had adequate materials in support of their claim for reinstatement, however, it was not placed before

the Labour Court and the High Court, and accordingly A
prayed that the same be considered by this Court in order
to render substantial justice to them.

Allowing the appeals, the Court

HELD: The compromise memo between the B
workmen and the management, followed by the award of
the Labour Court as well as the materials furnished about
the number of days on which the appellants worked and
the wages received, clearly support their stand. In view C
of the peculiar facts, namely, the stand taken by the
Management in the form of compromise agreeing to
reinstate and provide seniority to the appellants from the
date of their first appointment, as evidenced in the
“Compromise Deed”, the information/materials D
mentioned above cannot be ignored lightly, though not
projected before the Labour Court and the High Court.
Considering the abundant materials which were
unfortunately not placed before the Labour Court and in
order to give an opportunity to these workmen, the order
of the Labour Court, and the order of the High Court are E
set aside and the matter is remitted to the Labour Court
with a direction to consider the claim of the workmen
afresh. The workmen are permitted to place relevant
documents in support of their claim before the Labour
Court. The respondents/management are also permitted F
to place the relevant material, if any, in support of their
defence. Both the workmen and the management are
permitted to place their relevant materials in support of
their respective stand and thereafter, the Labour Court is
directed to consider and pass appropriate orders in G
accordance with law, after affording opportunity to both
parties. [Para 9] [858-B-H; 859-A-B]

*Secretary, State of Karnataka and Others v. Umadevi
and Others, (2006) 4 SCC 1, referred to.*

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Case Law Reference:

(2006) 4 SCC 1

referred to

Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1750-1751 of 2010.

B

From the Judgment & Order dated 2.11.2006 of the Learned Single Judge of Hon'ble High Court of Chhattisgarh at Bilaspur in Writ Petition No. 5508 of 2006 and final order dated 6.11.2007 passed by Division Bench in Writ Appeal (P.R.) No. 6823 of 2007

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Akshat Shrivastava, Inderjeet Yadav, Raj Kumar Gupta and Dharam Bir Raj Vohra for the Appellants.

Milind Kumar, A. Patnaik and D.B. Ray for the Respondent.

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The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1 Leave granted.

2. These appeals are directed against the final order dated 02.11.2006 passed by the learned single Judge of the High Court of Chhattisgarh at Bilaspur in Writ Petition No. 5508 of 2006 and final order dated 06.11.2007 passed by the Division Bench of the same High Court in W.A. (P.R.) No. 6823 of 2007 whereby the High Court dismissed the writ petition and the writ appeal filed by the appellants herein.

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3. Brief Facts:

According to the appellants, on 05.08.1989, they were selected on the temporary post of Nakedar by a duly constituted Selection Committee on the pay-scale determined by the Collector. At the threat of removal, the appellants approached the Labour Court in 1994. At this stage, respondent No.1 and the appellants filed a joint petition dated 10.01.1995 for compromise in which respondent No.1 agreed to reinstate the

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appellants and also to grant seniority and other benefits from the date of their initial appointment that is 05.08.1989. On the basis of the compromise petition, the award dated 27.04.1995 was passed by the Labour Court, Durg, directing the respondent therein to reinstate the appellants herein. Again in 2000, when an attempt was made to remove the appellants arbitrarily, initially it was the High Court which granted status quo in their favour and thereafter the higher authorities intervened and prevented the respondents from victimizing the appellants. In view of the said efforts, the respondents once again ordered reinstatement of the appellants on 06.01.2001.

4. Despite such voluminous material demonstrating the continuous working of the appellants with the respondents, according to the appellants they were dismissed on the ground of failure to establish that they worked for more than 240 days continuously in one calendar year. Aggrieved by the same, the appellants approached the High Court by way of a writ petition. By the order impugned, the High Court, after pointing out that the appellants were on daily wage basis and have not completed 240 days in one calendar year which is the condition precedent for attracting the provisions of Section 25F of the Industrial Disputes Act, 1947 confirmed the order of the Labour Court and dismissed their writ petition. The said order is under challenge in these appeals.

5. Heard Mr. Akshat Shrivastava, learned counsel for the appellants and Mr. Milind Kumar, learned counsel for the respondents.

6. At the outset, learned counsel appearing for the appellants-workmen fairly stated that because of the ignorance though the appellants were having adequate materials in the form of documents and communications from the respondents/ employer, they were not properly placed the same before the

- A Labour Court in support of their claim for reinstatement. He also submitted that even before the High Court these additional documents were not placed for consideration and requested this Court to consider the same in order to render substantial justice to the workmen. The appellants have filed a separate application for taking those additional documents Annexures P-18 and P-19 on record. Considering the plight of the workmen, we perused the said Annexures P-18 and P-19 which contain details such as number of days worked in a month, salary paid by the respondents commencing from year 1994 ending with 2004. The documents in Annexures P-18 and P-19 clearly show the number of days on which both the appellants worked.

7. Apart from the above details, the appellants have also pressed into service Annexure-P4, the terms and conditions of compromise entered into between the appellants/workmen and the Krishi Upaj Mandi Samiti, Bemetara/Management. Since Annexure-P4 was pressed into service by the workmen, it is useful to refer the same:

E "ANNEXURE P/4

BEFORE THE HON'BLE LABOUR COURT, DURG

Case No. 18/1994 I.D. Act

Date of Institution: 10.01.1995

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Balram Singh Rajput, Clerk
Santuram Yadav, Nakerdar
Santosh Yadav, Bharitya

....First Party

G AND

Krishi Upaj Mandi Samiti, Bemetara Second Party

Both parties respectfully submits that the both parties

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have arrived at compromise under the following terms and conditions A

TERMS AND CONDITIONS OF COMPROMISE

1. That the second party will reinstate the first party workmen into their services and they will be granted seniority from the date of their first appointment. B
2. That towards the symbolic backwages for the period in the meantime, the second party will pay a sum of Rs.1/- per workmen. C
3. That the first party workmen will get salary from the date of their joining of duty and as per the Circular No. 2546 dated 28.02.1994 of the Hon'ble Collector, Durg in the following manner D

Balram Singh Rajput, Clerk - Rs. 1412/-

Santu Ram Yadav, Nakedar - Rs. 996/-

Santosh Kumar Yadav, Bhritya - Rs. 996/- E

Per month. Apart from the aforesaid Circular, the Circulars issued by the Hon'ble Collector in this reference, shall also be applicable on both parties.

It is respectfully prayed that an Award may be passed under the terms and conditions of the aforesaid compromise. F

Prayed accordingly.

Durg

Date: Advocate for the Second Party G

Applicant:

1. Balram Singh Rajput, Clerk H

A 2. Santu Ram Yadav, Nakedar

3. Santosh Kumar Bhritya

Advocate for the First Party"

B 8. Based on the compromise between the appellants and the respondent-management, the Labour Court, Durg by award dated 27.04.1995 while making a reference about justifiability of the termination of service of these workmen recorded the compromise deed and directed the management to reinstate
C Santuram Yadav and Santosh Yadav, the appellants herein.

9. On going through Annexure P-4, compromise memo between the workmen and the management, followed by an award dated 27.04.1995 of the Labour Court, Durg as well as the materials furnished in the form of Annexures P-18 and P-19 about the number of days on which both the appellants worked and the wages received clearly support their stand. We are conscious of the fact of the implication of Constitution Bench decision of this Court in *Secretary, State of Karnataka and Others vs. Umadevi and Others*, (2006) 4 SCC 1. However,
D in view of the peculiar facts, namely, the stand taken by the Management in the form of compromise agreeing to reinstate and provide seniority from the date of their first appointment 05.08.1989, as evidenced in the "Compromise Deed", we are of the view that the information/materials mentioned above
E cannot be ignored lightly though not projected before the Labour Court and the High Court. Considering the abundant materials which were unfortunately not placed before the Labour Court and in order to give an opportunity to these workmen, we set aside the order of the Labour Court, Durg dated 08.08.2006
F in case No. 56/ID Act/Reference/2005 and the order of the High Court dated 02.11.2006 in Writ Petition No. 5508 of 2006 and order dated 06.11.2007 in W.A. (P.R.) No. 6823 of 2007 and remit the matter to the Labour Court, Durg with a direction to consider the claim of the workmen afresh. The workmen are
G permitted to place Annexures 4, 5, 18 and 19 as well as any
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other relevant documents in support of their claim before the Labour Court. The respondents/management are also permitted to place the relevant material, if any, in support of their defence. Both the workmen and the management are permitted to place their relevant materials in support of their respective stand within a period of eight weeks and thereafter, Labour Court, Durg is directed to consider and pass appropriate orders in accordance with law, after affording opportunity to both parties, within a period of three months thereafter.

10. The civil appeals are allowed on the above terms. No costs.

B.B.B.

Appeals allowed.