



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 143 of 2017

1 - Sewa Ram Sinha S/o Shri Nandlal Sinha, Aged About 40 Years Twelfth Class, Assistant Electrician Helper , R/o Industrial Area, Near Nilesh Kirana Store, Ward No. 18, Durg, 491001, Tahsil And District Durg, Chhattisgarh., Chhattisgarh

... Petitioner

versus

1 - Executive Engineer Public Works Department, Electrical- Mechanical Division Durg, Durg- 491001, Tahsil And District Durg, Chhattisgarh., Chhattisgarh

---- Respondent

For Petitioners	:	Mr. Hemant Kumar Agrawal, Advocate
For State	:	Mr. Anil S. Pandey, G.A.

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

17.03.2026

1. Heard.
2. The petitioner has filed this petition challenging the award passed by the learned Labour Court, Durg (C.G.) in Case No.12/I.D.Act/Reference/2013 dated 23.02.2017, whereby, the statement of claim presented by the petitioner has been dismissed.
3. The facts of the present case are that services of the petitioner were discontinued on 05.10.2012 and thereafter, an application was moved before the Labour Commissioner, Raipur and matter was referred to the competent Labour Court according to the

provisions of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'). In the statement of claim, the petitioner pleaded that he was appointed under the respondent in the month of February, 2006 to the post of Electric Helper. His services were discontinued on 05.10.2012 without following the procedure contemplated in Sections 25F, 25N and 25 of the Act of 1947. The petitioner pleaded that he worked for 240 days in a calendar year but no inquiry was conducted and no retrenchment allowance was paid. The petitioner prayed for reinstatement with full back wages.

4. The respondent filed a written statement and took plea that the petitioner was never engaged by the department in the month of February, 2006. It was further pleaded that no order of appointment was issued. It was also stated that the petitioner never worked for 240 days in a calendar year rather his engagement was casual in nature, therefore, there was no need to conduct an inquiry or to follow the provisions of law contemplated under Sections 25F, 25N and 25 of the Act of 1947.
5. Learned Labour Court framed issues. The workman examined his witness and exhibited certain documents and thereafter, learned Labour Court dismissed the statement of claim vide award dated 23.02.2017.
6. Mr. Hemant Agrawal, Advocate appearing for the petitioner would submit that the petitioner worked for 240 days in a calendar year and stated this fact on affidavit which was never rebutted. He would further submit that the workman examined himself whereas

the department failed to examine any witness. It is also argued that the applications under Right to Information were moved before the respondent authority to provide relevant documents with regard to his engagement but no response was given. It is submitted that the petitioner has placed on record certain documents along with rejoinder to demonstrate that the petitioner worked for 240 days in a calender year. He would contend that the documents have been supplied by the department under Right to Information after disposal of reference case. He would further contend that the burden was upon employer to establish the fact that the workman was never engaged and he did not work for 240 days in a calender year but department failed to discharge burden of proof. He would pray to allow this petition.

7. On the other hand, Mr. Anil Pandey, learned Government Advocate appearing for the State would oppose submissions advanced by Mr. Agrawal. He would submit that the learned Labour Court dismissed the statement of claim on the ground that the workman failed to establish the fact that he worked for 240 days in a calender year. He would further submit that the workman could not produce relevant documents to establish this fact. It is further argued that the engagement of workman was casual in nature and no order of appointment was ever issued. He would submit that the present petition deserves to be dismissed.
8. Heard learned counsel appearing for the parties and perused the record.

9. In support of statement of claim, the petitioner examined himself and stated that he was engaged in the department in the month of February, 2006 against the post of Electric Helper. His services were discontinued on 05.10.2012 without following due process of law. He further deposed that an experience certificate was issued by the Sub-Engineer on 23.10.2010. It is also stated on affidavit that applications were moved to provide relevant documents with regard to engagement. The petitioner stated on affidavit that no inquiry was conducted prior to decision of discontinuation of his services. In cross-examination, this witness admitted the fact that normally the department issues an advertisement to fill-up the vacant posts. He further admitted that in the year 2007, an advertisement for the post of Electric Helper was floated and he had submitted his application form. He further admitted that the said advertisement was subsequently cancelled and no appointment order was issued in his favour. He also admitted that he was engaged pursuant to an oral order. He also admitted the fact that an experience certificate was issued in his favour by the Sub Divisional Officer but the said authority has not been impleaded as party. This witness further stated that an advertisement was issued to fill up the post of Electric Helper in the Civil Court and on the request of the petitioner, the said experience certificate was issued in his favour by an authority.
10. The workman examined another witness namely Manoj Jaiswal, who worked in the department from 01.12.2007 to 27.12.2009. He stated on affidavit that services of the petitioner were discontinued

on 05.10.2012. It is also stated that the petitioner was paid salary from month of February, 2008 to September, 2009 and this fact is evident from entries made in Cash Book. He also stated that the petitioner worked for 240 days in a calendar year. In cross-examination, this witness stated that he does not know the exact date of engagement of the petitioner-Sewa Ram Sinha. The department examined Tembhurne S/o B.S. Tembhurne, Executive Engineer, Public Works Department. This witness on affidavit stated that Sewa Ram Sinha/workman was never engaged in the month of February, 2007 to the post of Electric Helper. No advertisement was issued by the department to fill up the post of Electric Helper. The department never issued an order of appointment in favour of workman. He stated that the engagement of the workman was casual and he had no authority of law to appoint any employee. In cross-examination, he denied the contents of affidavit submitted by the workman.

11. The petitioner has placed on record application for reappointment addressed to the Superintendent Engineer, Public Works Department dated 06.12.2012, wherein, he stated that he worked for seven years and his services were discontinued contrary to law.
12. An experience certificate Ex.P/2 was issued in favour of the petitioner by the Sub-Divisional Officer on 23.10.2010 wherein, it is stated that the workman worked in the department for a period of four years. The petitioner failed to examine said official to establish the fact that the said certificate was issued by the competent

authority and he had worked for more than four years.

13.Ex.P/3-C reflects names of daily-rated employees, who were working with the department since 01.01.1998 but in said document, name of the petitioner is not mentioned.

14.Ex.P/4-C is a letter addressed to the petitioner wherein, it is stated that his services have been discontinued as his engagement was casual in nature.

15.Ex.P/5-C is a letter addressed to the Chief Engineer, Public Works Department, wherein, it is stated that the engagement of the petitioner and two others was casual in nature and their services have been discontinued. It is also mentioned that there is no instruction issued by the State to appoint daily-rated employees.

16.Vide Ex.P/6-C, the petitioner has sought information with regard to engagement of all daily-rated employees, their names and address.

17.Ex.P/7-C is another application moved under Right to Information, whereby the petitioner sought documents with regard to his attendance and payment of wages from date of appointment till last date of his service.

18.In these applications moved under Right to Information Act, the petitioner did not seek any specific document with regard to his engagement or muster roll.

19.Vide Ex.P/8, P/9, P/11 & P/12, the petitioner was informed that the department has not engaged any daily rated employee. Pursuant

to RTI application, Ex.P/7-C, the petitioner was provided hand receipts for the month of November, 2008, January, 2009, September, 2009, July, 2009, September, 2009, June, 2009 and July, 2009.

20. These documents do not establish the fact that the petitioner worked for 240 days in a calendar year.

21. Ex.P/29 would show that the petitioner was engaged with the department and wages were paid.

22. With regard to documents placed on record along with rejoinder, those documents were not submitted before the learned Labour Court by the petitioner. The respondent has not been provided opportunity to dispute the credibility or authenticity of those documents, therefore, at this stage, those documents cannot be considered.

23. It has been well settled legal position that for getting protection of Section 25(f) of the Industrial Disputes Act, it is incumbent on the part of the workman to plea and prove the continuous 240 days service preceding date of termination. Section 25(B) defines continuous service and Section 25 provides grant of retrenchment compensation to the workman.

24. Sections 25-B and 25-F of the Industrial Dispute Act are extracted below:-

"25B. Definition of continuous service. For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service,

including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety- five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25. Coming to the facts of the case that there is no evidence that the

petitioner was an employee of the respondent and no documentary evidence was placed on record to substantiate the pleading that he has worked for 240 days in a preceding 12 months before the date of termination. The self-serving statement of the petitioner cannot establish that he worked for 240 days in preceding 12 months before the date of termination which is essential for getting protection under Sections 25(f) of the Industrial Dispute Act.

26. Hon'ble Supreme Court in case of **Municipal Corporation, Faridabad vs. Siri Niwas**, reported in **2004(8) SCC 195** has held as under:-

"14. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his

case."

27. From the above legal position and considering the fact of case, it is quite clear that the petitioner has not produced any cogent document to demonstrate that he has worked for 240 days in the preceding 12 months, therefore, there is no illegality or perversity in the order dated 23.02.2017 passed by the learned Labour Court which warrants interference by this Court exercising power under Article 226 of the Constitution of India. Accordingly, this petition fails and is hereby **dismissed**.

Sd/-

(Rakesh Mohan Pandey)

Judge

Rekha