

State of M.P. Vs. Jitendra

State of M.P. Vs. Jitendra

SooperKanoon Citation : sooperkanoon.com/502123

Court : Madhya Pradesh

Decided On : Feb-20-2003

Reported in : [2003(97)FLR884]; 2003(3)MPHT48

Judge : A.M. Sapre, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 10 and 25F; [Constitution of India](#) - Article 227

Appeal No. : Writ Petition No. 194/2003

Appellant : State of M.P.

Respondent : Jitendra

Advocate for Pet/Ap. : V. Sharan, Dy. Govt. Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

A.M. Sapre, J.

1. Having heard learned Counsel for the petitioner and having perused the record of the case, I find the petition to be entirely misconceived and hence deserves to be dismissed in limine.

2. It is a petition under Article 227 of the [Constitution of India](#). Petitioner seeks to challenge the award dated 4-2-2002 passed by the Labour Court on a reference made under Section 10 of the Industrial Disputes Act to the said Labour Court in Case No. 1/I.D. Act/2001 Reference (Annexure P-2).

3. An industrial reference was made to the Labour Court at the instance of the respondents to the Labour Court under Section 10 of the I.D. Act to decide the legality and validity of the termination of the respondent. The said reference was seized by the Labour Court. Parties were called upon to file respective statements in support of their contentions. The respondent filed the statement and lead evidence whereas the petitioner did not file any statement nor lead any evidence. They remained ex parte. The Labour Court vide the impugned order dated 4-2-2002 answered the reference in favour of the respondent. It was held that the respondent has actually worked with the State on the post of Chowkidar in Circuit House, Ratlam, on a salary of Rs. 1,034/- since 1992 -1997 continuously for a period of 5 years. It was also held that respondent having worked continuously for 240 days in one calendar year is entitled to protection of labour laws. It was also held that since no charge-sheet was given to the respondent nor any enquiry was held prior to his termination and hence his termination from the service is bad in law and is, therefore, entitled to be reinstated with full back wages. It is this award which is impugned by the petitioner-State in this writ petition.

3. In my opinion, the writ petitioner has no case. Firstly, they were ex parte in the Labour Court. They did not file any statement nor did they file any evidence. Secondly, in the absence of any rebuttal, the petitioner can not justify the termination. Thirdly, no evidence having been filed before the Labour Court and again before this Court to show that if the petitioner had been afforded any opportunity, they would have been able to justify the termination on facts no case of interference is made out. Fourthly, in the absence of any contest from the petitioner side, the Labour Court had no option but to accept the evidence led by the respondent and held the termination to be bad in law.

4. Once on facts finding is recorded that a particular employee has worked for more than 240 days in one calendar year continuously and that his services were

terminated without holding enquiry and without inflicting any charge upon him, such termination will amount to illegal retrenchment. When admittedly in this case even before this Court the petitioner has failed to substantiate the background under which the impugned termination came to be passed, there is absolutely no case made out for setting aside the award passed by the Labour Court. The award of back wages has to follow as a necessary consequence when the termination order is set aside. There is no evidence to rebut the allegations made by the respondent that he was at any point of time working for gain after his termination. The burden was upon the petitioner to lead adequate and cogent evidence either before the Labour Court or even before the High Court by way of documentary evidence to show that the respondent actually worked for gains and, therefore, at least the direction of back wages should be set aside. Since nothing has been done by the petitioner except to file this writ petition, the same has no merit. As a matter of fact such petition should not be filed by the State Government which does not have any foundation to stand either before the Labour Court or before the High Court. The petitioner should, therefore, reinstate the respondent by implementing the direction contained in the impugned award.

Petition thus fails and is dismissed in limine.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com