**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P. (L) No.4041 of 2009**

M/s Paul and Company, a partnership firm having its Works and office at Bayangbil, Sundarnagar, P.O. and P.S. Sundarnagar, Town Jamshepur, District East Singhbhum through its partner Shri Narayan Paul son of late Gour Chandra Paul, resident of 3, Shuili Road, Pramathanagar, P.O. & P.S. Pramathanagar, Town Jamshedpur, District Singhbhum East ..…… Petitioner

**Versus**

Shri Ramesh Chand Mahalik son of Anant Chand Mahalik, resident of Balti Karkhana Campus, Sundarnagar, P.O. and P.S. Sundarnagar, Town Jamshepur, District East Singhbhum

……. Respondent

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**CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD**

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For the Petitioner : Mr. Anupam Shandilya, Advocate
For the Respondent : Mr. Manish Kumar, Advocate

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**Oral Order in Court**
**14/Dated:30th July, 2024**

Heard Mr. Anupam Shandilya, learned counsel for the petitioner and Mr. Manish Kumar, learned Counsel for the respondent.

2. This writ petition has been filed on behalf of the petitioner, challenging the Award dated 19.01.2009 passed in Reference Case No.11 of 2004 by Shri Rajesh Kumar Vaish, then Presiding Officer, Labour Court, Jamshedpur by which the learned Presiding Officer has passed the Award in favour of the Respondent Workman and has set aside the termination letter no.p1/423/M.117/2000-01 dated 16.02.2001 and directed the Management i.e. the petitioner to reinstate the Respondent-Workman Ramesh Chand Mahalik in his service and to pay him 50% of the back wages along with all consequential benefits and the Workman shall be deemed in the service of the Management.

3. Learned counsel for the petitioner has submitted that the impugned Award passed by the learned Court below is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the learned Court below has passed the Award mechanically in favour of the workman and against this petitioner. It is submitted that the workman was a habitual absentee and he was unauthorisedly absent from 14.01.2000 to 12.02.2001 and no proper document was filed for his unauthorisedly absence. It is submitted that the Respondent-Workman has produced merely the certificate marked as Exhibit-M to Exhibit-M/17 issued by the office of Employees State Insurance Corporation (ESIC) to show that the workman was unwell. It is submitted that no certificate of Doctor was filed by the Respondent-Workman to the effect that he was suffering from any ailment. It is submitted that earlier also the Workman was absent from 24.12.1999 to 30.12.1999 and also absent from 27.11.1999 to 23.12.1999 and thus the Workman was a habitual absentee. It is submitted that even after resuming duty on 30.02.2001 the Workman was unable to perform his work assigned to him earlier by the Management and he refused to do his work by giving excuse of health issue. Thus, the petitioner-Management was compelled to terminate the petitioner from his service for unauthorised absence and for not producing proper document regarding illness.

4. It is further submitted that the learned Court below has directed for reinstatement with 50% back wages which is not proper. It is submitted that the Exhibit-M/14 to M/17 respectively are merely information of sickness. It is submitted that Exhibit-M to M/12 are not the certificates issued by the Employees State Insurance Corporation (ESIC) and the same are not the medical prescriptions which do not disclose that the Workman was fit or

not fit to resume his duties and in order to distinguish the same, the Management has produced Exhibit-M to Exhibit-M/17 which are the information of sickness. It is submitted that the Award of 50% back wages is also illegal and the Workman has not worked for the said period and hence the impugned Award may be set aside and the writ petition may be allowed.

5. On the other hand, learned counsel for the Respondent-Workman has submitted that the impugned Award passed by the learned Court below is fit and proper and no interference is required. It is submitted that the Respondent-Workman was terminated from the services in violation of principles of natural justice. It is submitted that it is a case of non-compliance of provisions of Section 25-F of the Industrial Disputes Act as the Workman was the permanent employee of the petitioner-company. It is submitted that neither any show cause notice was issued nor any charge sheet was served upon the Respondent-Workman nor any enquiry was held and the Workman was directly terminated from his services. Thus, the termination order of the Workman was bad in law. It is submitted that the Respondent-Workman in support of his case had got examined himself and had produced the documents which were found correct by the learned Court below and as such this writ petition may be dismissed.

6. Perused the records received from the learned Labour Court, Jamshedpur and considered the submissions of both the sides.

7. It transpires that the Respondent-Workman was an employee of the petitioner-company since the year 1994.

8. It appears that earlier also the Respondent-Workman was absent from duty on 17.12.1998 to 30.12.1998 and again he was absent from 20.11.1999 to 31.12.1999. However, on that occasions

he had produced the sickness certificate dated 20.11.1999 and 31.12.1999 issued by Dr. A.P. Mahesh of ESI Corporation.

9. It further transpires that the workman again became absent from 14.01.2000 to 12.02.2001.

10. It transpires that the Workman had produced certain documents which were marked as Exhibit-M to Exhibit-M/12 and Exhibit-M/14 to M/17 respectively on behalf of the Management i.e. the petitioner which were letters issued by the Employees State Insurance Corporation (ESIC). However, vide letter dated 16.02.2001 the Respondent-Workman was terminated from the services.

11. The industrial dispute was raised after failure of the conciliation proceedings and the terms of the Reference before the learned Labour Court, was as follows:-

> "Whether the dismissal of Shri Ramesh Chand Mahalik, Ex-employee no.1065, the workman of M/s Paul and Company, Sundarnagar, Jamshedpur (East Singhbhum) by the management is justified ? if not, what relief he is entitled to ?"

12. It transpires that the Management-Petitioner and the Respondent-Workman in their support had filed their respective Written Statements before the Labour Court.

13. It transpires that the Respondent-Workman in support of his case got examined himself as W.W-1-Ramesh Chand Mahalik.

14. The Respondent-Workman in support of his case, had proved the following documents as follows:-

(i) Exhibit-W is the termination letter dated 16.02.2001,
(ii) Exhibit-W/1 is the letter dated 25.02.2000 issued by M/s Paul and Company,
(iii) Exhibit-W/2 is certificate dated 11.08.2008 issued by the doctor of ESI Corporation Sakchi, Jamshedpur

(iv) Exhibit-W/3 is the application dated 22.07.2008 of the Workman Ramesh Chand Mahalik written to Medical Officer ESI Corporation

15. The Petitioner-Management in support of its case had got examined one witness, M.W-1-Mr. Manoranjan Bhawal.

16. The Petitioner-Management in support of its case, had proved the following documents as the Exhibits, as follows:-

(i) Exhibit-M is certificate dated 15.01.2001 issued by Medical Officer ESI Corporation,
(ii) Exhibit-M/2 is certificate dated 21.10.2000 issued by Medical Officer ESI Corporation,
(iii) Exhibit-M/1 is certificate dated 18.11.2000 issued by Medical Officer ESI Corporation,
(iv) Exhibit-M/3 is certificate dated 23.09.2000 issued by Medical Officer ESI Corporation,
(v) Exhibit-M/4 is certificate dated 26.08.2000 issued by ESI Corporation,
(vi) Exhibit-M/5 is certificate dated 28.07.2000 issued by ESI Corporation,
(vii) Exhibit-M/6 is certificate dated 01.07.2000 issued by ESI Corporation,
(viii) Exhibit-M/7 is certificate dated 03.06.2000 issued by Medical Officer, ESI Corporation,
(ix) Exhibit-M/8 is certificate dated 06.05.2000 issued by Medical Officer, ESI Corporation,
(x) Exhibit-M/9 is certificate dated 08.04.2000 issued by Medical Officer, ESI Corporation,
(xi) Exhibit-M/10 is certificate dated 11.03.2000 issued by Medical Officer, ESI Corporation,
(xii) Exhibit-M/11 is certificate dated 11.02.2000 issued by Medical Officer, ESI Corporation,
(xiii) Exhibit-M/12 is certificate dated 06.05.2000 issued by Medical Officer, ESI Corporation,
(xiv) Exhibit-M/13 is certificate dated 12.02.2001 issued by Medical Officer, ESI Corporation,
(xv) Exhibit-M/14 is certificate dated 07.01.2000 issued by Medical Officer, ESI Corporation,
(xvi) Exhibit-M/15 is certificate dated 31.12.1999 issued by Medical Officer, ESI Corporation,
(xvii) Exhibit-M/16 is certificate dated 24.12.1999 issued by Medical Officer, ESI Corporation and

(xviii) Exhibit-M/17 is certificate dated 21.11.1999 issued by Medical Officer, ESI Corporation,

17. At this stage, it would be relevant to refer Exhibit-M/4 to Exhibit-M/17 which are the certificates between 21.11.1999 to 12.02.2001 which reveals that the Workman was unwell and he was sick and suffering from flural effusion i.e. the Tuberculosis.

18. Even from perusal of the evidence of the Management-M.W-1 which reveals that he has merely stated about the absence of the Workman from 14.01.2000 to 14.01.2001 and he has also discussed about his earlier absence.

Even during cross-examination when he was confronted on the question of lighter punishment of warning issued against the Workman, he admitted that he has no documentary evidence to support the fact for giving him lighter punishment earlier. He has admitted Exhibit-W/1 which was produced by the Workman during his cross-examination in which it has been stated that the Workman was suffering from T.B (i.e. Tuberculosis).

19. Thereafter the learned Presiding Officer had set aside the termination order on the ground that provision of Section 25-F of Industrial Disputes Act had not been complied with by the Management and the service of the Workman had been terminated in contravention of provision of Section 25-F of Industrial Disputes Act.

20. From perusal of the Termination Letter dated 16.02.2001, (which was exhibited as Exhibit-W in the Court below and has been enclosed as Annexure-1 in the supplementary affidavit to this writ petition), it would appear that the Workman had remained absent from 27.11.1999 till 30.12.1999 and also from 31.12.1999 to 06.01.2000. Thereafter he was absent from 14.01.2000 to 12.02.2001. Thereafter he had reported to his duty on 13.02.2001

and the Management verbally asked him to submit explanation for remaining absent within next 48 hour. However, he failed to file any explanation and thus the Management had terminated the services of the petitioner with effect from 16.02.2001 on the ground of physical unfitness of the Workman.

21. Therefore, it is evident that the Workman-Respondent was the permanent employee of the Management-company, has neither issued show cause notice in writing nor issued any charge sheet in writing to him for his unauthorized absence nor any enquiry was conducted.

22. At this stage, it would be relevant to refer Section 25-F of the Industrial Disputes Act:-

> *"**25-F. 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-*
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> *(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;*
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> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous] or any part threreof in excess of six months; and*
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> *(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]"*

23. Section 25-F mandates that any Workman employed in any industry who has been continued in service for not less than one year shall be retrenched by that employer unless the Workman has been given one month's notice in writing indicating the reasons for retrenchment and the Workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen

(15) days of his pay and the notice was to be issued in the prescribed manner.

24. It is further evident from the termination order that neither any show cause notice was issued to the Workman nor any enquiry was concluded and no notice under Section 25-F was served upon him.

25. Thus, there is complete non-compliance of the provisions of Section 25-F of the Industrial Disputes Act on behalf of the Petitioner-Company while terminating the Respondent-Workman from his services.

26. The action of the Petitioner-Company also amounts to violation of principles of natural justice as without affording any opportunity to defend his case, the Workman has been terminated from his service.

27. It has been held in the case of ***State of Haryana and Others Vs. Devi Dutt and Others*** reported in **(2006) 13 SCC 32** at Para 8, 9 and 10 as follows**:-**

> ***"Para-8:-*** *The High Court ordinarily should not have interfered with the said finding of fact. We, although, do not mean to suggest that the findings of fact cannot be interfered with by the superior courts in exercise of their jurisdiction under Article 226 of the Constitution of India, but the same should be done upon application of the well-known legal principles such as: (1) when it is perverse; (2) when wrong legal principles have been applied; (3) when wrong questions were posed; (4) when relevant facts have not been taken into consideration; or (5) the findings have been arrived at on the basis of the irrelevant facts or on extraneous consideration.*
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> ***Para-9:-*** *The High Court ordinarily also ought not to have entertained an additional affidavit without assigning any sufficient or cogent reason therefor. The parties adduced their evidence before the Industrial Court. Why could they not bring on record any other evidence before the Labour Court, was not explained. The contentions raised before the High Court for the first time in the additional affidavits*

*filed before it, were also not admitted by the appellants herein.*

***Para-10:-*** *We, therefore, are of the opinion that the High Court erred in passing the impugned judgments. Submission of Mr Harish Chandra that this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India, cannot be accepted. The High Court, in our opinion, has exceeded its jurisdiction. It failed to apply the well-known legal principles of judicial review. Furthermore, the appellants acted bona fide. The orders of termination were passed in terms of its policy decision. The Presiding Officer, Labour Court categorically opined that the workmen had been disengaged keeping in view the exigency of work, which had been mentioned in the muster roll itself. It was found as of fact that no junior had been retained. The State also acted in terms of the directions issued by the High Court. Whether such directions were legal or illegal, is not a matter which fell for consideration before the Labour Court, but, there cannot be any doubt whatsoever that the appellants acted bona fide."*

28. It has been held in the case of ***Krishna Bhagya Jala Nigam Limited vs. Mohammed Rafi*** reported in **(2009) 11 SCC 522** at Para 8 as follows**:-**

***"Para-8:-*** *"7. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] it was held as follows : (SCC p. 26, paras 2-3)*

*'2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10-8-1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.*

*3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry"*

*or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar [(2001) 9 SCC 713 : 2002 SCC (L&S) 269] . In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.'*

*The said decision was followed in Essen Deinki v. Rajiv Kumar [(2002) 8 SCC 400 : 2003 SCC (L&S) 13] .*

*8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan [(2004) 8 SCC 161 : 2004 SCC (L&S) 1055] the position was again reiterated in para 6 as follows : (SCC p. 163)*

*'6. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] . No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed.'*

*9. In Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195 : 2004 SCC (L&S) 1062] it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram [(2004) 8 SCC 246 : 2004 SCC (L&S) 1092] the position was again reiterated in para 11 as follows : (SCC p. 250)*

*'11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195 : 2004 SCC (L&S) 1062] wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard : (SCC p. 198, para 15)*

> *"15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent." '*

*10. In RBI v. S. Mani [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. The Tribunal's view that the burden was on the employer was held to be erroneous. In Batala Coop. Sugar Mills Ltd. v. Sowaran Singh [(2005) 8 SCC 481 : 2006 SCC (L&S) 11 : (2005) 7 Supreme 165] it was held as follows : (SCC pp. 484-85, para 13)*

*'13. So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] the onus is on the workman.'*

*The position was examined in detail in Surendranagar Distt. Panchayat v. Dahyabhai Amarsinh [(2005) 8 SCC 750 : 2006 SCC (L&S) 38 : (2005) 7 Supreme 307] and the view expressed in Range Forest Officer [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] , Siri Niwas [(2004) 8 SCC 195 : 2004 SCC (L&S) 1062] and M.P. Electricity Board [(2004) 8 SCC 246 : 2004 SCC (L&S) 1092] cases was reiterated.*

*11. In ... R.M. Yellatti v. Executive Engineer [(2006) 1 SCC 106 : 2006 SCC (L&S) 1 : JT (2005) 9 SC 340] the decisions referred to above were noted and it was held as follows : (SCC p. 116, para 17)*

*'17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.' "*

*The above position was again reiterated in ONGC Ltd. v. Shyamal Chandra Bhowmik [(2006) 1 SCC 337 : 2006 SCC (L&S) 113] , at SCC pp. 340-43, paras 7-11 and Ranjit Sagar Dam v. Sham Lal [(2006) 9 SCC 124 : 2006 SCC (L&S) 1617 : 2006 AIR SCW 3574] .*

29. It has been held in the case of ***Akhil Bhartiya Koyla Kamgar Union, through its Area Secretary, Dwijendra Nath Sandhu vs. Employer in relation to the Management of Bhowra Colliery, Bharat Coking Coal Ltd.*** reported in **(2023) SCC OnLine Jhar 2850** at Para 14 as follows**:-**

> ***"Para-14:-*** *It is well established that in the exercise of its jurisdiction under Article 226, the High Court does not sit in appeal over the orders of the Industrial Tribunal/Labour Court. The exercise of such powers being supervisory in nature must necessarily remain confined to the award which is made improperly or suffers from an error of law apparent on the face of the record or is based on the findings of fact that are perverse. In "State of Haryana v. Devi Dutt" (2006) 13 SCC 32 the Hon'ble Supreme Court has held as under:*
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> > *"8. The High Court ordinarily should not have interfered with the said finding of fact. We, although, do not mean to suggest that the findings of fact cannot be interfered with by the superior courts in exercise of their jurisdiction under Article 226 of the Constitution of India, but the same should be done upon application of the well-known legal principles such as : (1) when it is perverse; (2) when wrong legal principles have been applied; (3) when wrong questions were posed; (4) when relevant facts have not been taken into consideration; or (5) the findings have been arrived at on the basis of the irrelevant facts or on extraneous consideration."*

30. Thus, this Court finds that there is no illegality and perversity in the Award dated 19.01.2009 passed in Reference Case No.11 of 2004 by the Presiding Officer, Labour Court, Jamshedpur.

31. Accordingly, this W.P.(L) No.4041 of 2009 is dismissed.

**(Sanjay Prasad, J.)**

Saket/-