

CWP-17472-2014

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-17472-2014
Decided on: January 11, 2024

Smt. Krishna

...Petitioner

Versus

Presiding Officer, Labour Court, Rohtak and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Deepak Sonak, Advocate,
for the petitioner.

Mr. Praveen Chander Goyal,
Additional Advocate General, Haryana,
for the respondents.

SANJAY VASHISTH, J.

1. Present writ petition has been directed against award dated 21.02.2014, passed in Reference No. 150 of 2008, by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak (hereafter referred to as 'the Tribunal'), whereby reference referred under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the Act'), has been answered against the worklady and in favour of the Forest Department, Haryana (management), by maintaining the termination order, holding that the same does not suffer from any illegal infirmity.

Therefore, Smt. Krishna, being worklady, has filed the present writ petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari, for quashing/setting aside of the impugned award, passed by the Tribunal and consequent thereupon to

reinstate her in service, with continuity and full back wages from the date of termination i.e. 31.12.2005.

2. Facts in brief are that on 19.11.2007, petitioner (worklady) issued a demand notice, under Section 2A of the Act, claiming that in the month of January, 1987, she was appointed as a Baildar-cum-Mali by the Divisional Officer, Territorial, Van Mandal, Jhajjar (Deputy Conservator of Forest, Jhajjar)[respondent No. 2 herein] and she worked till 31.12.2005 at different places in Jhajjar range. The services rendered by her were entirely to the satisfaction of the respondent-management. However, without assigning any reason, she was terminated from service illegally on 01.01.2006. Thus, the petitioner (worklady) raised an industrial dispute claiming that since she had worked continuously under the respondent-management from January, 1987 to 31.12.2005, she is entitled to reinstatement in service, with continuity and full back wages. This way, Reference No. 150 of 2008, was referred to the Tribunal for its adjudication.

3. The petitioner (worklady) also pleaded in her claim statement that her termination, after rendering service from January, 1987 to 31.12.2005, is against the principles of natural justice; even some of the junior persons were still working with the respondent-management, and principle of 'last come first go', has not been followed; and, therefore, termination of the petitioner is in contravention of the provisions of Sections 25-F, 25-G and 25-H of the Act.

4. In the written statement filed by respondent No. 2, on facts, it has been ***specifically denied*** that the petitioner worked from January, 1987

to 31.12.2005. Rather, it is pleaded that the management came into existence in the year 2004. Since, no details of the working days in any of the beat has been given by the worklady, while out rightly denying her claim, respondent-management sought dismissal of the claim statement.

5. In separate written statement filed by respondent No. 3 herein, i.e. Divisional Forest Officer, Van Mandal, Rohtak (Deputy Conservator of Forest, Rohtak), it is pleaded that the petitioner never worked for 240 days in preceding 12 months, and that she was never appointed by the respondent-management, as alleged by her. Rather, working for a single day has also been denied. Thus, relationship of employee and employer between the parties is denied.

6. No replication was filed and following two issues were framed:-

“(i) *Whether termination of services of the work lady is justified and, if not, to what relief he (she?) is entitled to?*
OPW

(ii) *Relief.*”

7. While dealing with the status/relation of the parties as employee and employer, learned Tribunal held that the petitioner has completely failed in proving her assertion that she worked with the respondent-management as no documentary evidence has been led by the petitioner showing that she actually worked from January, 1987 to 31.12.2005. Learned Tribunal also held that since working of 240 days in a calendar year has not been proved, petitioner failed to prove her relationship with the respondent-management. On this ground, reference under Section 10(1)(c) of the Act, has been answered against the petitioner (worklady), by upholding the termination

order.

8. Challenging the said findings, learned counsel for the petitioner (worklady) argues that, in fact, while examining the crux of the issue, learned Tribunal has failed to follow the dictum of the judgments passed by the Hon'ble High Court. Further submits that once there is an admission by the witness appearing from the office of the management that he has not brought the summoned record in regard to the working period alleged by the petitioner, i.e. from January, 1987 to 31.12.2005, learned Tribunal was required to draw an adverse inference for non-production of record against the respondent-management itself, which is crucial one and in all probabilities same is in possession of the respondent-management. Thus, findings given by the learned Tribunal are untenable and worth to be reversed, by allowing the claim statement in its entirety.

9. During the course of hearing, learned counsel for the petitioner also submitted that an application dated 04.05.2010, was moved by the petitioner, wherein a prayer was made to summon the concerned person/clerk from the office of the Divisional Forest Officer, Territorial Van Mandal, Jhajjar, alongwith the following record:-

- (1) Muster rolls of all the schemes of Territorial Wing of Jhajjar Range from January 1987 to 31.12.2005, and Muster roll issue register for the said period.
- (2) Record of attendance and salary alongwith muster rolls of Rambir son of Pratap Singh, village Dubaldhan, District Jhajjar, for the period from January 1987 to uptil

date.

- (3) Record of attendance and salary alongwith muster rolls of Bir Singh son of Raje Ram, village Bihar, District Jhajjar, for the period from June 1987 to uptil date.

10. After moving of the said application, a direction was issued by learned Tribunal and on the request of the petitioner (worklady), Surat Singh, Forester, Jhajjar, appeared as WW-2, who deposed in specific that **he has not brought the “muster rolls” and “muster roll issue register” for the period from January 1987 to December 2005.** Further, there is a deposition by the same witness that Rambir son of Partap Singh, resident of Dubaldhan, District Jhajjar, joined the service under the respondent-management in June, 1997, and worked as daily wage labourer. This official witness, i.e. Surat Singh (WW-2) also admitted that he failed in bringing the record pertaining to Rambir son Partap Singh and Bir Singh son of Raje Ram also.

11. The stand of the petitioner (worklady) and deposition of her witness, and witnesses from the office of respondent-management, has been noticed in paragraph Nos. 9 and 10 of the impugned award, which says as under:-

“9. The work lady while appearing as WW-1 has reiterated the averments as raised in the demand notice and stated that she was employed as Beldar by the respondent/management in the month of January 1987 and she worked upto 31.12.2005 under Jhajjar division. She further deposed that she worked in different areas of Jhajjar Range under the supervision of various Forest Guards namely Ranbir Singh, Ramesh, Raje Ram, Sewa Ram, Raghubir Singh, Wazir Singh, Dharampal and Ram Kumar etc. She has also deposed that her services were dispensed with on 01.01.2006 verbally without assigning any reason and at that time of termination of her services neither any notice nor notice pay and retrenchment

compensation was paid to her. She has also deposed that at the time of termination of her services junior persons namely Rambir S/o Partap Singh R/o Dubaldhan Distt. Jhajjar, Bir Singh S/o Raje Ram R/o Village Bihar, Distt. Jhajjar and Virender S/o Laxman R/o Village Chimini, Distt. Jhajjar were still working with the respondent/management.

10. *Another witness namely WW-2 Surat Singh, Forester, Jhajjar, Distt. Jhajjar has deposed that he has brought the summoned record, but he has not brought the muster rolls and muster roll issue register for the period from January 1987 to December 2005. He further deposed that Rambir S/o Partap Singh R/o Dubaldhan, Distt. Jhajjar joined the service under the respondent/management in June 1997. Rambir worked as daily wage labourer. He further deposed that he has not brought the record of Rambir S/o Partap and Bir Singh S/o Raje Ram R/o Distt. Jhajjar.”*

12. Contrary to the initial plea taken by the respondent-management, one Range Forest Officer, namely, Raj Kumar Raghav, was examined as MW-1, who tendered his affidavit (Ex. MW-1/A), wherein he stated that the worklady was never appointed as Beldar-cum-Mali in January 1987, and, in fact, she was engaged on daily wage basis from time to time, as per requirement of the work as labourer and she remained daily wager throughout.

Thus, on the one hand stand taken in the written statement is that the worklady never worked even for a single day, but on the other hand there is a clear admission in the affidavit (Ex. MW-1/A), which was tendered in evidence by the witness of respondent-management himself, admitting that the worklady was working on daily wage basis as per requirement. Paragraph Nos. 11 and 12 of the impugned award, in this regard, says as under:-

“11. To rebut this aforesaid evidence, the respondent/management has examined Raj Kumar Raghav,

Range Forest Officer as MW-1, who, while tendering his duly sworn affidavit Ex.MW-1/A has deposed that the work lady was never appointed as Beldar-cum-Mali on 01/1987, in fact the work lady was engaged on daily wage basis from time to time as per requirement of the work as labourer and she remained daily wager throughout. Further he has deposed that the work lady had not produced any record showing that he (she?) had ever worked with the respondent/management and as such her claim is without any basis. Further he has deposed that as the respondent/management has not violated any provisions of law and the work lady did not render continuous service of 240 days with the respondent/management.

12. *Though the work lady in her statement as WW-1 has deposed that she had rendered service with the respondent/management w.e.f. January 1987 to 31.12.2005, but except her self serving statement, there is absolutely nothing on the file to corroborate her statement. In the beginning of his (her?) cross-examination she has admitted this fact that he (she?) has got no documentary proof with her for rendering service and termination with the respondent/management for the aforesaid period. Even WW-2 Surat Singh, Forester, Jhajjar who had been summoned by the work lady has deposed that as per the available record the office of DFO (T) came into existence in the year 2005 and previously it was DFO Rohtak. Similar deposition has been made by MW-1 Raj Kumar Raghav, Range Forest Officer, who in his statement has categorically deposed that the worklady was employed on daily wage basis and she worked intermittently and she worked as and when there is requirement and thus there is no question of termination of her services. The aforesaid evidence of the respondent/management admittedly goes un-rebutted as not even an iota of evidence has been placed on the record of this file by the petitioner/work lady to rebut the credibility of the contents thereof or to prove the contrary. Had, the work lady actually worked under the respondent/management as stated by her own witness examined as WW-2 Surat Singh, Forrester wherein he has stated that the work lady might have worked under the respondent/management, she could have summon the record from the respondent/management, but the fact that no effort has been made by the petitioner/workman leads to the conclusion that the she actually did not work under the respondent / management as alleged by the respondent / management. It is improbable that the petitioner/workman, who claimed to have worked with the respondent/management for such a long period would not posses any documentary evidence to prove her working under the respondent/management and the period of work she had rendered with the*

respondent/management. Resultantly it is again established that the work lady had not rendered continuous service of 240 days prior to her alleged termination and in such circumstances, there is nothing on the file except the self serving statement of WW-1 Krishna, work lady.”

13. Broadly speaking, plea of the petitioner (worklady) has not been believed for the reason that she failed in proving the stand taken by her that on the post of Baildar-cum-Mali she has ever worked under the respondent-management, and to prove the said plea, worklady failed in producing any documentary evidence.

14. To examine the said situation, this Court is guided by the law laid down by this Court (Punjab and Haryana High Court) in the case of **The Divisional Forest Officer (Social Forestry Project), Bhiwani, now the Divisional Forest Officer (Territorial), Bhiwani v. Smt. Roshni Devi and another, 2010 (4) S.C.T. 271 : Law Finder Doc Id #215465**, wherein in para Nos. 5 and 6, following observations have been authored:-

“5. The contention of counsel for the petitioner/Management that the adverse inference can only be drawn against the Management, if the Management fails to produce the relevant records before the Labour Court cannot be accepted in the case in hand. The Worklady being a daily wager was neither issued appointment letter nor termination letter. The Management is the custodian of the records. The onus to prove that the Worklady had completed more than 240 days in service in the 12 preceding months from the date of her termination is on the Worklady and for discharging that onus, the Worklady was fully dependent on the Management for production of the records. She had, therefore, moved an application before the Labour Court, calling upon the Department to produce the relevant records, which were spelt out in the said application. The said application was allowed by the Labour Court and the records were summoned. Shri Ramesh Kumar/WW-2, Clerk, o/o Divisional Forest Officer (Territorial), Bhiwani, initially appeared on 10.03.2006, when he stated before the Labour Court that he had not brought the complete summoned records because the records have been sent

to other courts in cases and he would produce the complete records on the next date of hearing. Accordingly, examination-in-chief of the Witness was deferred to 13.11.2006. Shri Ramesh Kumar, appeared as a witness (WW/2) on 13.11.2006 and in examination-in-chief, he had deposed as follows:-

“xxxxxx I have not brought the muster rolls and muster roll Issue register from 1/99 to 12/99. These muster rolls are not available. Therefore, I have not produced this record in future.”

As per contention of the Worklady, her services were terminated on 31.12.1999. Thus, 12 preceding months, which were relevant for proving as to whether the Worklady had worked with the Management for more than 240 days in the 12 preceding months was from January, 1999, to December, 1999. These records were not produced by Shri Ramesh Kumar (WW-2), Clerk, o/o Divisional Forest Officer (Territorial), Bhiwani, who had been summoned by the Court on an application moved by the Worklady to produce the records. Not only did he state that he has not brought the muster rolls and muster roll issue register from January, 1999, to December, 1999, as the same were not available, rather he had further stated that he would not be able to produce the same in future as well. In such a situation where, although, on an application moved by the Workman/Worklady, a witness is called for production of records and who deposes on the basis of available records, it cannot be said that he would be deposing as an interested witness as far as the Workman/Worklady is concerned because he is not making a statement before the Labour Court on the basis of his personal knowledge, but on the basis of the records. When he states something on the availability or non availability of the records, there is no reason or justification why the Labour Court would not take it to be correct, when the same has not been contested or rebutted by the Management. Adverse Inference was not drawn because witness deposed for the Worklady or for the Management, but it was because of non production of the records, which has further been stated to be not available and cannot be produced in future. In these circumstances, the contention of counsel for the Management that adverse inference can only be drawn in case the Management Witness fails to produce the records, cannot be accepted and is hereby rejected.

6. *The records were summoned as the onus was on the Worklady to prove her assertion that she had completed 240 days in service in the 12 preceding months from the date of her termination and it would be her responsibility to prove the*

same, therefore, she made an application for production of the records and if the official, who is summoned to produce the records in possession of the Management, does not produce the same and further states that it is not available and will not be available in future as well, adverse inference which is drawn by the Labour Court cannot be said to be without any basis or not in accordance with law. The adverse inference drawn by the Labour Court in the given facts and circumstances of the case is fully justified and does not call for any interference by this Court.”

Similar is the ratio of judgement rendered in the case of **Ambika**

Prashad v. Punjab Urban Planning and Development Authority,

Chandigarh, 2001(3) S.C.T. 1132 : Law Finder Doc Id # 11129, and the

observations made in paragraphs Nos. 3 & 4 thereof, reads as under:-

“3. The payment and attendance registers, and logbook could have thrown light on the issue in dispute as to whether the workman had worked for the period as alleged. It is not open for the person having best evidence, to dodge the order of the Court and then to say that the burden of proof is on the other side. In case of **Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others, AIR 1968 Supreme Court 1413**, it has been observed by the Supreme Court that a person in possession of the best evidence has to produce the same and if not produced adverse inference can be drawn against the said party irrespective of the fact that onus of proof does not lie on him and that he was not called upon to produce the same. This principle directly applies to the facts of the present case and adverse inference can be drawn against the respondent. Therefore, there is no reason as to why it should not be hold that the petitioners have completed 240 days of services as alleged by them.

4. In these cases, apart from not producing the best evidence, themselves, the respondents have chosen to defy the orders of the Labour Court also when the Labour Court asked the evidence to be produced. Therefore, these cases are on much better footing than that of Gopal Krishnaji Ketkar case (*supra*).”

15. If the ratio of the said judgements is applied to the facts and circumstances of the present case, alongwith specific denial of not producing

the summoned record for the period from January, 1987 to 31.12.2005, on the application of the petitioner (worklady), same is in conformity as also at equal pedestal.

16. While further stretching out the facts and circumstances of the present case, this Court believes that as per the affidavit (Ex. MW-1/A), which was tendered in evidence by Raj Kumar Raghav, Range Forest Officer, while appearing as MW-1, worklady worked on daily wage basis as per the requirement. Once, the record for a specific period has been summoned in regard to the pleaded facts in the claim statement, that too on the basis of an application moved by the worklady, burden shifted heavily on the respondent-management to produce the summoned record of the questioned period, i.e. from January, 1987 to 31.12.2005. To discharge duty, some sort of evidence in regard to the daily wage appointment of the petitioner (worklady) and payment of salary to her, could have been explained, had the record, if any, been produced by the respondent-management at the time of evidence to be led by them.

17. Strangely, the respondent-management has tried to play smart, inasmuch as, the record pertaining to the crucial period, i.e. January, 1987 to 31.12.2005, was neither produced by Surat Singh, Forester, Jhajjar, when he was summoned in the witness box as WW-2, at the instance of the petitioner (worklady), nor the same was produced by the respondent-management on their own at the time of leading of evidence by them.

This Court would not miss out in observing that despite there being a specific averment in regard to equally situated persons, i.e. Rambir

son of Partap Singh and Bir Singh son of Raje Ram, no record qua them has been produced in evidence. Further, no plausible reason is forthcoming for non production of the summoned record by the respondent-management.

18. This Court would also like to add that the enactment of the Industrial Disputes Act, 1947, is not to debar poor labourers/workmen from their lawful right, who fight for their livelihood despite of the uncommon circumstances and poor health condition in most of the cases. Even such a legislation is framed with an object to extend all possible relief/benefits which are made out under the law.

19. Thus, in view of the observations made hereabove, this Court has no hesitation to hold that dismissal of the claim statement of the petitioner (worklady) by the learned Tribunal and declining the reference on technical aspect by missing the line and intent of the Act, is not sustainable/tenable under law. Therefore, in the absence of non-production of the record, this Court is constrained to draw an adverse inference against the respondent-management and it is held that the petitioner (worklady) was working under the management from January, 1987 to 31.12.2005 and has been illegally terminated from service without compliance of the provisions of the Act, more in specific, provisions of Section 25-F of the Act.

20. As a sequel to the above discussion, present writ petition is allowed. Accordingly, impugned award dated 21.02.2014, passed by the learned Tribunal is set aside, and the petitioner (worklady) is held entitled for reinstatement in service, with continuity and back wages to the extent of 50%.

The respondent-management is directed to take necessary steps in this regard and pass appropriate speaking orders within three months from today.

Registry is directed to send a copy of this judgement to the learned State counsel for onward transmission to the respondents, for compliance within time bound manner.

However, there shall be no order as to costs.

(SANJAY VASHISTH)
JUDGE

January 11, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes / ~~No~~
Whether reportable?	✓ Yes / ~~No~~