

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.11490 of 2013 (O&M)

Date of decision: 25.05.2015

Malkiat Singh

... Petitioner

Vs.

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Vikas Singh, Advocate with
Ms. Sukhmani Tiwana, Advocate
for respondent No.2.

AMIT RAWAL J.

Petitioner-workman has approached this Court against the order dated 03.04.2012 (Annexure P-9) passed by the Presiding Officer, Labour Court, Amritsar, whereby, reference has been answered against the workman.

Mr. Vipin Mahajan, learned counsel for the petitioner-workman submits that the petitioner continuously worked as Farm Helper with respondent No.2 from 1997 to 2003, on permanent post when his services were allegedly terminated without any notice and payment of any retrenchment compensation. On raising the demand, the matter was referred to the Labour Court and accordingly, the

claim petition was filed on 20.01.2005 (Annexure P-1). During the pendency of the petition, the petitioner examined witness in support of his claim who stated that the petitioner was working as Farm Helper from 1998 onwards and produced documents Exhibits W-1 to W-10 in support of his claim. Exhibit W-1(P-6) indicates that petitioner was working as Farm Helper and Annexure P-7 to P-7/6 (Exhibit W-2 to W-8) are Provident Fund Deduction made on year to year basis from the petitioner's salary and deposited with the Provident Fund Commissioner. He further submits that the respondent-Management examined Ravinder Singh in favour of their case who also admitted that work of Farm Helper is regular in nature. Despite the aforementioned evidence on record, the Labour Court has erroneously and perversely rejected the reference by holding that the petitioner is a seasonal employee and no evidence had been proved on record that petitioner continuously worked for more than five years.

Mr. Vikas Singh, learned counsel appearing on behalf of respondent No.2 submits that workman failed to lead any evidence that he worked continuously for a period of seven years and the Tribunal after appreciating the entire evidence held that the petitioner only worked with breaks as the work in the Sugar Mill is seasonal in nature and his continuous employment as alleged by him was not proved. He further submits that the petitioner was never employed against any regular post or worked continuously as alleged by him.

As per the judgment of Hon'ble the Supreme Court in **Morinda Co-**

op. Sugar Mills Ltd. vs. Ram Kishan and others 1995(5) SCC 653, the Sugar Industry is seasonal industry and when a seasonal employee is relieved of at the end of the season it does not amount to retrenchment. There was no post of Farm Helper under the Rules and the record of EPF did not show his continuous employment all around the year. The EPF was deposited only for the period the petitioner served during the crushing seasons, thus, prays writ petition be dismissed.

I have heard learned counsel for the parties and appraised the paper book.

Annexure P-4 is the copy of statement of Kulwant Singh, who appeared as WW-1 and stated that workman had joined his service in February 1998 and remained in continuous employment till February 2002 and even from March 2002 till November 2002, he remained on contract basis, then, again from December 2002 upto March 2003, he worked regularly and as per salary register he worked for two days in the month of April 2003. Thereafter, on the salary register, the remarks of being left, were written on the salary register. He further submitted that the work of Farm Helper is regular in nature. The relevant portion of the chief examination recorded on 21.05.2010 is extracted herein below:-

*“WW1 Sh. Kulwant Singh s/o Joginder Singh (Supdt) o/o
Ajnala Coop Sugar Mills, Ajnala*

*I have brought the summoned record of the dated
31.01.2002 bearing reference no.ACSM/MD/2001/5265-*

67 photocopy of which is Ex.W1 was issued to the workman being a farm helper. As per the record brought by me the workman joined his services in February 1998 and remained in continuous employment till February 2002. After from March 2002 till November 2002 he remained on contract basis, then against from December 2002 upto March 2003 he worked regularly and as per salary register he was worked for 2 days in the month of April 2003. Thereafter as per the salary register the remarks of being left is written on the salary register. The work of farm helper is regular in nature. I have not brought any record showing that workman was working on contract basis from March 2002 to November 2002, but I can produce the same. No notice, charge sheet were issued to the workman when he didn't report for duty in the month of April 2003.

Further chief examination of witness deferred with direction to the witness to produce the attendance/contract record from period March 2002 to November 2002 of concerned workman.

*RO & AC
Presiding Officer
Sd/-*

Sd/-

21.05.2010

*In the Court of Sh. J.S.Khusdil, Presiding Officer,
Industrial Tribunal (in the rank of District Judge), Amritsar.
Reference No.148 of 2004*

Date of Institution: 21.10.2004

Date of decision: 03.04.2012

*Malkiat Singh c/o Sanyati Mazdoor Union (Regd) Amritsar
affiliated to CITU.*

...Workman

Vs.

*The Ajnala Co-operative Sugar Mills, Bhallapind, Tehsil
Ajnala, District Amritsar through its Managing Director.*

...Respondent

*WW1 Sh. Kulwant Singh s/o Joginder Singh (Supd)
o/o Ajnala Coop Sugar Mills, Ajnala*

Recalled for further chief examination.

*As per the record brought by me the attendance of the
workman is marked upto 9/6/2002. After this the
attendance of workman starts in over record on
30.11.2002. I have not brought any contract for the
remaining period nor I can produce the same.*

RO&AC

Sd/- PO/2.8.2010

Sd/- Kulwant Singh.”

However, in cross-examination, to a specific question replied that the workman was in continuous employment till February, 2002 as the work of Farm Helper was seasonal in nature and not regular in nature. The workman never worked continuously for a period of seven years with the respondent. Relevant piece of the cross-examination of Kulwant Singh is reproduced herein below:-

“Recalled for cross-examination.

XXX, by Sh. Pardeep Saini, AR for the respondent.

The workman is not in employment with the answering respondent in 1.3.2003. The employment of the workman was for a period of 89 days and the salary of the workman was consolidated basis. The respondent invited the invitation because the seasonal when the season of sugarcane industry is start. Same procedure was adopted on 25.11.2002. This also the workman was never terminated. I have never stated that the workman was in continuous employment till February 2002. The work of farm helper is seasonal in nature and not regular in nature and I have never said in my explanation when the season of sugarcane industry comes to an end, the seasonal workers automatically are paid of and only those workers allowed who approach the employment. The workman has never worked with continuous period of 7 years with the answering respondent. It is wrong to suggest that file false affidavit."

In view of the aforementioned evidence, it is conclusively proved that petitioner was never appointed on regular post but employed only the work required by the Sugarcane Industry during the sugarcane season.

Annexure P-7 is the copy of the statement of contribution for the period from 1997-98 and from March 2003 to February 2004,

which shows that a contribution was being made out of his salary towards Provident Fund Scheme for the work.

Sh. Ravinder Singh son of Skattar Singh, Clerk, Ajnala Sugar Mill, Tehsil Ajnala, District Amritsar, appeared as MW2 and stated that the deduction of PF was made for workman-Malkiat Singh, petitioner but he could not reply to the question whether the deduction of PF was made for regular employees only.

On the basis of the aforementioned evidence brought on record, the Labour Court proceeded to decide as to whether the deduction of PF was being made from the salary of the petitioner as regular employee or not and after examining the evidence held that the workman failed to prove from attendance register/ receipt of salary for the period that he worked for 240 days in a calendar year and found that it was only during the season that he was taken into service and alleged termination cannot be rendered as violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

I am in agreement with the findings rendered by the Labour Court and draw support from the judgments of Hon'ble the Supreme Court in Morinda Co-op.Sugar Mills Ltd.' s case (supra), Bhogpur Co-op. Sugar Mills Ltd. vs. Harmesh Kumar **2007(1) S.C.T.277** and Anil Bapurao Kanase vs. Krishna Sahakari Sakhar Karkhana Limited **1997 AIR (SC) 2698**, wherein, it has been held that the seasonal workers cannot be permitted to allege that their services were retrenched in view of what is stated in clause (bb) of

Section 2(oo) of the Act and therefore, they could not, much less, claim that on the basis of their contribution towards PF. The petitioner being regular employee. As per statutory requirement of law for any Management whenever there are more than 20 employees to make contribution towards PF by deducting amount from the salary and as well as from their side.

Thus, there is no merit in the contention raised by learned counsel for the petitioner. Accordingly the Award of the Labour Court is upheld and the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

May 25, 2015
savita