

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.18874 of 2011
Date of Decision: April 27, 2015

Balbir Singh

...Petitioner

Versus

The New Jhang Transport Company Private Limited, Batala & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Ashwani Bakshi, Advocate,
for the petitioner.

None for the respondents.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 12.4.2010 (Annexure P-10), passed by the Labour Court, whereby the reference qua alleged termination of the petitioner, has been answered against the petitioner.

Mr.Ashwani Bakshi, learned counsel appearing on behalf of the petitioner contends that the Labour Court has committed an illegality and perversity in answering the reference against the petitioner by holding that there was no relationship of master and servant between the parties. He further submits that the petitioner brought on record certain challans, receipts and way bills, which have been issued by respondent No.1

Transport Company to the Conductors and the witness of the Management, though was confronted with the said documents, but he did not admit the same and rather stated that any body had the photocopies thereof. The witness also submitted that the way bills are though issued to the Conductors but the same are destroyed after 4-5 years and no record is retained regarding the workman employed for one or two days.

There is no representation on behalf of the respondents.

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

The onus to prove that the workman had worked for 240 days relies upon the workman. For the aforementioned observation, I draw support from the judgment of the Hon'ble Supreme Court in **Manager, Reserve Bank of India, Bangalore Versus S.Mani and others, (2005) 5 Supreme Court Cases 100**, wherein the Hon'ble Supreme Court has an occasion to cull down the ratio decidendi by holding that though the principles of the Evidence Act do not apply, but the fact remains that it was upon the workman to specifically state that he had worked for 240 days and ought to have moved an application for calling upon the Management to prove the documents in support of his case as the workman would not be in possession of all the documents, i.e., the pay/salary slips, attendance register etc.

In the present case, no such effort was made by the petitioner by moving an application during the pendency of the matter before the Labour Court calling upon the Management to produce the aforementioned documents. Had such an application been moved and record not produced,

adverse inference was liable to be drawn against the Management and presumption in favour of the workman. The documents which have been marked only, i.e., challans and way bills, are photocopies. No effort has been made to summon the original record as the witness of the Management in cross-examination has stated that any body could manufacture the photocopies.

Mr.Bakshi relies on the judgment in **Director, Fisheries Terminal Division Versus Bhikubhai Meghajibhai Chavda, AIR 2010 Supreme Court 1236** by laying an emphasis on para 15 to contend that the workman did not have any access to the documents of the Management and the onus was on the Management to prove the same. For the sake of brevity, para 15 of the aforementioned judgment is extracted herein below:-

“15. Applying the principles laid down in the above case by this court, the evidence produced by the appellants has not been consistent. The appellants claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. It is the contention of the appellant that the services of the respondent were terminated in 1988. The witness produced by the

appellant stated that the respondent stopped coming to work from February, 1988. The documentary evidence produced by the appellant is contradictory to this fact as it shows that the respondent was working during February, 1989 also. It has also been observed by the High court that the muster roll for 1986-87 was not completely produced. The appellants have inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, in spite of the direction issued by the Labour Court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, it would be pertinent to mention the observation of three-Judge Bench of this court in the case of Municipal Corporation, Faridabad v. Siri Niwas [(2004) 8 SCC 195]: (2004 AIR SCW 5184), where it is observed:

“A Court of Law even in a case where provisions of the Indian 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 the contentions. The matter, however, would be different where despite direction by a court the evidence is withheld.”

From the reading of para 15 of the judgment, it is clearly made out that it was for the workman to allege in his affidavit or make a statement that he did not possess any document and accordingly could have moved an application. However, the workman in his examination-in-chief (Annexure

P-4) when he appeared as WW-1 did not aver a single word as to non-possessing of the aforementioned documents, so that the onus would have been shifted upon the Management. The examination-in-chief of the workman is extracted herein below:-

“WW-1 Sh.Balbir Singh aged 50 years S/o Sh.Mohinder Singh, resident of Village Dhindsa, P.O. Ghomann Kalan, District Gurdaspur on SA.

I had been working with the respondent since 2.2.92 till 1.1.04 when my services were terminated by the respondents illegally. No notice, notice pay and retrenchment compensation was paid to me. I was drawing Rs.2100 PM as salary at that time. After my termination Sawinder Singh and Harjinder Singh were given the job by respondent who are still working. I asked for deposit of provident fund but the respondent terminated my services. My ESI contribution and provident fund used to be deducted. I used to do the work earlier on Bus No.PB-A 425 and then on PB-06-B-5952 and PB-06-1225. I have seen my signatures on photostat copies of challan receipts and the originals one with the respondents. Driver with me used to be Harpal Singh, Angrej Singh and Harjinder Singh and Adda Incharge was Manmohan Singh at Fatehgarh Churian. At Pathankot Adda Incharge was Kulwant Singh. I identify their signatures. I tried my level best to find same job but to no effect. The documents are Mark A to Mark Z and Mark A-1 to Mark A-20. I want my reinstatement with continuity of service and full back wages.”

In the absence of any evidence brought on record, the workman has failed to prove the relationship of employer and employee. The workman had the knowledge of averment qua denial of the relationship of employee and employer when the respondent filed the written statement,

therefore, it could not be said that he faced with the situation for the first time. When the matter was referred to the Labour Court, he could have easily led evidence in support of his stand and, thus, could have rebutted the stand taken by the Management in the written statement. No such effort has been made. Accordingly, the Labour Court, after examining the evidence brought on record, arrived at a conclusion that the workman has failed to prove the relationship of master and servant. The argument of Mr.Bakshi is devoid of merit and the present case does not warrant interference by this Court under Article 226 of the Constitution of India.

Accordingly, the award of the Labour Court is upheld and the writ petition is dismissed.

April 27, 2015
ramesh

(AMIT RAWAL)
JUDGE