

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 17106 of 2012
Date of decision : May 12, 2015

Divisional Forest Officer and others

..... Petitioner

Versus

Sh. Balwan Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Keshav Gupta, AAG., Haryana
for the petitioners.

Mr. Liaqat Ali, Advocate
for respondent No.1.

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?

Amit Rawal, J (oral).

The challenge in the present writ petition is to the award dated 29.2.2012 (Annexure P-7) whereby the reference has been answered against the petitioner-Management and in favour of the respondent-workman.

Mr. Keshav Gupta, AAG., Haryana submits that the Labour Court has wrongly drawn an inference by observing that the workman had discharged the onus by making a pleading that he had worked for 240 days. In support of his contention he has relied on the judgment in **Manager, Reserve Bank of India Vs. S. Mani and othes 2005 (5) SCC 100.** He further submits that the Labour Court could have drawn an adverse inference, had the workman moved an

application calling upon the Management for the documents to prove that he had completed 240 days or not. In the absence of the record, occasion would have arisen for drawing an adverse inference against the workman.

Learned counsel for the respondent-workman submits that the argument was placed on behalf of the petitioner in similar writ petitions and the writ petitions filed against the award have been dismissed.

I have heard learned counsel appearing on behalf of the petitioner, and perused the paper book.

In the demand notice in para 15 the workman had categorically stated that he had worked for 240 days in the relevant year and in the corresponding paragraph the petitioner Management specifically denied the aforementioned plea.

Since the averments made in paragraph 15 in Annexure P-3 and replied in paragraph 15 in Annexure P-4 have been specifically denied by the Management, the onus as per the judgment in **Manager, Reserve Bank of India's case (supra)** heavily laid on the workman. In order to lend support I deem it appropriate to reproduce paragraph 30 of the aforementioned judgment as under:-

In Range Forest Officer Vs. S.T.Hadimani it was stated (SCC p.26, para 3)

:3.... 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.”

Since the Labour Court had embarked only on the premise that the workman worked/rendered service of 240 days but has not gone into or deliberated upon other points, I deem it appropriate to remand the case back and decide the controversy afresh after giving an opportunity to the parties to the *lis* in accordance with law.

Accordingly the award of the Labour Court is set aside, the writ petition is allowed. The Labour Court shall decide the case as expeditiously as possible within a period of eight months from the date of receipt of certified copy of the order after giving an adequate opportunity to the parties to the *lis* to lead evidence in support of their claim or counter claim.

(AMIT RAWAL)
JUDGE

May 12 , 2015
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