

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

Civil Writ Petition No.2012 of 2011

Date of decision: 3.12.2015

Pawan Kumar

... Petitioner

Versus

The Executive Engineer, PWD, Mechanical Division and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.N.K.Malhotra, Advocate,
for the petitioner.
Mr.Gaurav Goel, AAG, Haryana.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The additional affidavit filed by Mr.Gaurav Goel, AAG, Haryana filed in Court today is taken on record. Copy has been supplied. The affidavit has been filed in response to the order dated 15.10.2015 which is reproduced as under : -

“Mr.Goel prays for time to file an additional affidavit of a responsible officer of the department informing the Court as to how the calculations of days have been made in Annexures R-3 and R-4. They will disclose in the additional affidavit whether Saturdays, Sundays, off days and holidays are included in the working days or not. Let the affidavit be filed within two weeks. Mr.Goel would also study the judgment in **Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation;** (1985) 4 SCC 71.

Adjourned to 3.12.2015.”

The respondents have examined the matter in the light of the decision of the Supreme Court [supra]. It has been categorically admitted in para. 4 of the affidavit that Sundays & Gazetted Holidays had not been included as attendance in Annexure R-3 and R-4. The only dispute which requires attention and resolution has been solved and the petitioner indisputably had worked for over 240 days during the relevant period. The jurisdictional facts under Section 25-B read with Section 25-F of the Industrial Disputes Act stand satisfied and proven in terms of the assessment in para. 3 of the affidavit filed in Court today.

Besides, there is corroboration of the factum of completion of 240 days in the reply filed by the State to the application No.9387 of 2015 that the attendance for the year 1997 was filed as per records received from the Executive Engineer, Mechanical Division, PWD, B&R Branch, Rohtak and the reply was filed accordingly in earlier CM No.5387 of 2011 in which the attendance for the months of July, August and September, 1997 was not taken into consideration due to oversight by the Executive Engineer of the aforesaid division. The reply filed by the State is dated October 9, 2015.

Mr.Goel submits and he has good reasons too that the petitioner has not asked for reinstatement specifically in his prayer clause in para. 13. There is, however, a portmanteau prayer in para. 13 (ii) where this Court has been requested to issue any other writ, order or direction which it deems fit to issue in the facts and circumstances of the case.

Having considered the argument of Mr.Goel which may tend to non-suit the petitioner from relief if accepted, I would not accept his submission on its face since in para. 11 (b), the petitioner has raised a law

point questioning whether the termination of the petitioner by respondent No.1 regarding his services is liable to be reinstated? Para. 11 has been verified as true and correct to the knowledge of the petitioner and, therefore, this Court accepts para. 11 (b) as a part of pleadings to be read into the prayer clause.

Since the position has been clarified, no further point needs to be discussed. The premise on which the Labour Court answered the reference against the workman stands removed. Obviously, there is an error apparent on the face of record.

Accordingly, the writ petition is allowed and a writ of certiorari is issued setting aside the award passed by the Presiding Officer, Labour Court, Rohtak on 28.5.2010 in reference No.215 of 1999 in the remand proceedings. The petitioner served from January, 1995 to October, 1998 as a driver. The termination is held to be illegal and ab-initio void for non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. The petitioner is reinstated to service with continuity as though he was never removed from service. The back wages will follow and the extent of relief will be governed by the decision of the Supreme Court in **Fisheries Department, State of U.P. v. Charan Singh**; 2015 (2) SCT 597 : (2015) 8 SCC 150 where the Supreme Court has expounded the result of an illegal termination which is void ab-initio, then the relief must follow in due course if there are no debilitating action detracting from relief which I find none present. As a result, the petitioner be reinstated forthwith.

(RAJIV NARAIN RAINA)
JUDGE

December 3, 2015

