

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

CWP No.11273 of 2015 (O&M)

Date of decision: 28.05.2015

Sahib 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. Amarjit Singh, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Challenge in the present writ petition is to the Award dated 01.01.2015 (Annexure P-8) passed by the Presiding Officer, Industrial Tribunal, Amritsar, whereby the reference viz-a-viz, alleged termination of the workman has been dismissed on the premise that he has not worked continuously for the period of 240 days in the calendar year.

Mr. Amarjit Singh, learned counsel for the petitioner submits that the order of the Labour Court in declining the reference is illegal, erroneous, perverse, much less, without jurisdiction and capricious as the Management did not produce the complete record with regard to the attendance register and service record of the petitioner.

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

At the outset, it is relevant to mention here that the petitioner served a demand notice dated 23.07.2004 and during conciliation proceedings, the matter was referred to Industrial Tribunal, Amritsar, for adjudication. The petitioner filed statement of claim before the Labour Court and copies of the demand notice and statement of claim are annexed as Annexure P-1 and Annexure P-2. On perusal of the same, it is nowhere made out that any averment had been made to the effect that the petitioner-workman has been completed 240 days in the calendar year. The Labour Court after detailed discussion, arrived at categoric finding that the workman had worked only for five or six, nine, ten, 23, 24, 25, 26, 27 days in few months, therefore, he did not complete 240 days in the calendar year. The relevant portion of the Award reads thus:-

“2. In the statement of claim, the workman has stated that he was working as a Beldar with the Management at the rate of ₹2,040/- per month since 22.12.1997; that he was terminated by the management on 31.3.2001 without any notice, charge-sheet or enquiry and without retrenchment compensation and also without following the provisions of Section 25-F of the Industrial Disputes Act, 1947; that the management has also retained the junior workmen in service and that the termination of the

services of workman by the management is illegal and wrong. Lastly, it is prayed by the workman that he be reinstated with continuity of service and full back wages and other benefits of service, if any.”

It is settled law that originally onus was upon the workman to prove that whether he worked for 240 days in a calendar year and if he fails to prove then the onus shifts upon the Management. When there is no pleadings qua completion of 240 days, question of discharging the burden does not arise. The relevant observations in the Award reads thus:-

“15 On the other hand, MW1 Avtar Singh, Assistant Engineer, tendered his affidavit Ex.M1. He has started in his affidavit that Sahib Singh was never appointed by the Municipal Corporation, Amritsar at any stretch of time, nor, he was given any salary. In fact, he had worked for few days in the year 1997 as daily wager, for which he had been given pay. There is a document Ex.AX produced in this case by MW2 Avtar Singh, S.D.O. Zone No.8, Chheharta Amritsar, which contains various attendance registers. There is attendance register of the Municipal Corporation, Amritsar, for the month of September, 1997, where Sahib Singh is shown to have worked as Beldar and his salary has been shown as ₹ 5,456/-. There is another attendance register of January,

1998, in which Sahib Singh is shown to have worked as Beldar and his salary has been shown as ₹1,426/-. Similarly, there is another attendance register of February, 1998, where Sahib Singh is also shown working as Beldar and his salary has been shown as ₹1,312/-. There is also attendance register for the month of May, 1998, where salary of Sahib Singh has been shown as ₹912/-. There is also another attendance register of the month of July, 1999, where Sahib Singh is shown to have worked for ten days and he was given salary of ₹786/-. There is also another attendance register for the month of August, 1999 where Sahib Singh is shown to have worked for 26 days and he was given salary of ₹1,768/-. There is also another attendance register for the month of December, 1999 in which Sahib Singh is shown to have worked for 26 days. There is also another attendance register for the month of December 1998 where Sahib Singh is shown to have worked for ten days. There is also another attendance register of the month of November, 1998, where Sahib Siingh is shown to have worked for five days. In March, 1999, Sahib Singh is shown to have worked for five days. In April, 1999, he is shown to have worked for 24 days. There is also another attendance register for the month of

February, 2000 where Sahib Singh is shown to have worked for 23 days. There is also another attendance register, where he is shown to have worked for 27 days. There is also another attendance register of April, 2000, where he is shown to have worked for 25 days. So, from the record it is clear that he had worked as Beldar, but not continuously and he was never a permanent employee of Municipal Corporation, Amritsar. He had worked for 242 days according to the record produced by the Municipal Corporation, Amritsar.”

Since the workman has failed to prove that he had worked for 240 days continuously in the calendar year. The reference has rightly been dismissed. The Award of the Labour Court is legal and justified and is supported by judgment of Hon'ble the Supreme Court in **Manager, Reserve Bank of India, Bangalore vs. S.Mani and others** (2005) 5 Supreme Court Cases 100.

There is no merit in the present writ petition and the Award of the Labour Court is upheld. Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

May 28, 2015
savita