

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

Civil Writ Petition No.12279 of 2014 (O&M)
Date of Decision: July 03, 2015

Haryana Forest Development Corporation Ltd., Panchkula

...Petitioner

Versus

The Presiding Officer, Labour Court, Ambala & others

...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.Ravinder Hooda, Advocate,
for the petitioner.

Mr.Sanjeev Sharma, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 28.4.2014 (Annexure P-5), whereby the reference has been answered in favour of the workman and he has been held entitled to reinstatement into service with continuity of service along with 50% back wages.

Mr.Ravinder Hooda, learned counsel appearing on behalf of the petitioner-Management contends that there was no relationship of employer and employee and the Labour Court has, thus, failed to notice the aforementioned fact as the workman was employed through Contractor M/s

P.K.Bhasin & Company and even the salary was being paid by the Contractor, therefore, the workman could not be termed as a worker of the petitioner-Management. He further submits that even the work and conduct of the workman was not upto the mark. Accordingly, his services were terminated on 6.9.2010.

Mr.Sanjeev Sharma, learned counsel appearing on behalf of respondent No.2-workman submits that the Management has made an attempt to give distorted picture/facts in this Court by not referring to the statement of the Management and as well as the documents and their own agenda, whereby the workman, after one month, was taken on regular rolls of the Management by separate order. In this regard, he has drawn the attention of this Court to Annexure R2/1 (colly), i.e., letter dated 1.1.2010, which shows that the salary was being paid to the workman through the exchequer of Haryana Forest Development Corporation Limited and even the name of the workman is on the rolls of the Management. The workman had also been given bonus from the year 2006 onwards. All the documents have been produced and proved on record. He has also drawn the attention of the Court to the statement of Shri J.S.Bedi, authorized representative of the Management, who unequivocally admitted that the workman was initially appointed for one month, i.e., in the month of December, 2006 through M/s P.K.Bhasin and Company and on seeking his outstanding performance, he was taken on regular job and his salary was enhanced from ₹5500/- to ₹11,500/- and, therefore, the award of the Labour Court is fair, legal, justified and may not be interfered with while exercising the powers of judicial review under Article 226 of the Constitution of India.

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

It is a matter of record that Shri J.S.Bedi, authorised representative of the Management, suffered a statement before the Labour Court, which has been noticed in para 8 of the impugned award, whereby it has been stated that the workman was regularly appointed and even his salary was enhanced from ₹5500/- to ₹11,500/-. Para 8 of the award reads thus:-

“Sh.J.S.Bedi, AR for the management has stated that for one month i.e. Dec.2006 workman was paid salary from M/s P.K.Bhasin and company but on seeing his outstanding performance he was taken on regular job by the respondents and his salary was enhanced from Rs.5500/- to Rs.11,500/-. Sh.Rajesh Kumar, AR for the workman has stated that due qualification for the said post he has done a diploma from M/s Harton in computer application. He is 10+2 along with 61% number and fulfills the requirement of the said post. Sh.Sunil Kumar workman has worked for more than 240 days with the respondents. He was initially paid Rs.5500/- but on seeing his performance his last drawn salary was Rs.11,500/-. He has already completed the service of more than 240 days during the preceding 12 months and at the time of termination of his services no prior notice and retrenchment compensation under section 25-F of the Act has been paid to him. The juniors to the applicant are still working with the management. This amount to unfair labour practice and non compliance of the mandatory provisions of section 25-F of the Act. Hence, termination orders of the workman Sunil Kumar are held to be illegal, null and void and he is entitled for reinstatement with continuity of service along with 50% back wages which shall be paid by Haryana Forest Development Corporation within one month

from today. Keeping in view my observations, issue No.1 is being decided in favour of the workman and against the management.”

Mr.Ravinder Hooda, learned counsel for the petitioner-Management has not been able to dispute the aforementioned statement, much less document Ex.R2/1 (colly), which shows that the workman was being paid salary through the exchequer of the Corporation and even was being paid the bonus, as noted above.

In view of the aforementioned situation, it does not lie in the mouth of the Management to say that there was no relationship of employer and employee, rather the writ petition is wholly misconceived. The Officer, who has given the opinion, ought to have recorded in the record all the findings rendered by the Labour Court before filing the writ petition. Even before this Court, it was vehemently contended that there was no relationship of employer and employee, which has been reflected in the order dated 30.6.2014, but the aforementioned statement, as stated above, in view of my observations, is contrary to the record.

Since the petitioner-Management has not approached this Court with clean hands and has filed the writ petition in a most casual and callous manner, I intend to impose costs of ₹20,000/- upon the petitioner-Management, to be recovered from the Officer, who has given the opinion for filing the writ petition. The justification of imposing the costs is that the workman has been unnecessarily dragged into this Court to defend the present writ petition.

In view of what has been observed above, there is no merit in the writ petition. The award of the Labour Court is fair, legal and justified.

Resultantly, the writ petition is dismissed with costs of ₹20,000/-. The petitioner-Management would be at liberty to recover the costs of ₹20,000/- from their Officer and make the payment to the workman within a period of two months, failing which liberty is given to the workman to move an appropriate application in this regard.

July 03, 2015
ramesh

(AMIT RAWAL)
JUDGE