

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.15361 of 2013
Date of Decision: August 07, 2015

Ram Kumar

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak & 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.M.S.Kuthuria, Advocate,
for Mr.Rakesh Nehra, Advocate,
for the petitioner.

Dr.Sushil Gautam, DAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 17.4.2013, whereby the reference raised by the petitioner qua his alleged termination has been rejected.

Mr.M.S.Kuthuria, learned counsel appearing on behalf of the petitioner submits that the Labour Court has committed an illegality and perversity in declining the reference despite the fact that a witness of the Management was summoned by the petitioner-workman to produce the record, i.e., muster-rolls for the period mentioned in the application (Annexure P-5) (at page 33). The witness did not produce the muster-rolls

for the period from September, 1999 to July, 2001, the period for which the petitioner is alleged to have rendered his service. He further submits that the workman was earlier appointed on 6.1.1985 and his services were terminated in December, 1986 and it has been proved on record that he had completed more than 240 days.

Dr.Sushil Gautam, learned Deputy Advocate General, Haryana appearing on behalf of the State submits that the workman has failed to produce on record any document to prove his employment, as alleged, from September, 1999 to July, 2001 and, therefore, the Labour Court has rightly rejected the reference by drawing an adverse inference.

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

It would be apt to refer relevant paragraph of the award which weighed in the mind of the Labour Court in declining the reference, which reads thus:-

“As far further contention raised by the learned authorized representative for the petitioner/workman to the effect that WW-1 Sh.Balwan Singh, SDO summoned witness from the respondent/management has not brought the entire attendance record of the petitioner/workman as he has very categorically stated in his statement that “he has not brought the muster rolls and attendance registers from September, 1999 to July, 2001”, so adverse inference should be drawn against the respondent/management and it has to be held that the respondent/management has not produced the entire service record of the petitioner/workman just to deprive him from his statutory right. After thoroughly going to the pleadings and evidence referred to above and the material available on the

file, this Court is of the considered opinion that no credence at all can be accorded to the aforesaid contention of the learned authorized representative for the petitioner workman, as is clear from the fact that the respondent/management has produced the entire record available with it on the record of this file and there is no reason to belie the same especially when the documentary evidence as referred to above had been got produced on the record by the workman himself through the summoned witness WW-1 Balwan Singh O/o SDO Water Services, Sub Div. Charkhi Dadri, it is true that the respondent/management is the custodian of the record especially in the case of daily wagers but when the contention raised by the workman is disputed by the respondent/management, the onus shifts upon the workman to prove his assertion but there is nothing on the record from which it can be inferred that the record was not complete and the record favourable to the workman has been withheld by the management just to deprive the statutory and rightful right. Thus on this score also no adverse inference can be drawn against the respondent/management that too especially in the circumstances when it is well settled proposition of law that it was for the workman to prove that he had worked for more than 240 days before his termination in the last 12 preceding calendar months.”

Once the witness of the Management summoned by the workman categorically stated that he did not bring the record, i.e., muster-rolls and attendance registers from September, 1999 to July, 2001, the Labour Court was enjoined upon an obligation to take into consideration the settled law, that, it was to draw adverse inference against the Management and instead of doing so, the Labour Court had put a blame on the workman by giving reason that he had not discharged the onus. It is settled

proposition of law, as has been held in catena of judgments, that where a particular record has been summoned and the same has not been brought on record, adverse inference is required to be drawn against the Management. Thus, in my view, the workman is deemed to have been in job from September, 1999 to July, 2001. The demand notice has been served on 19.12.2001. Since the workman was appointed as Beldar on daily wages, I do not deem it appropriate to grant him relief of reinstatement, much less, continuity of service as he has failed to prove availability of job/post.

It is now well settled that if it is found that the workman has rendered 240 days and there has been violation of provisions of Section 25-F of the Industrial Disputes Act, 1947, the reinstatement is not automatic.

Therefore, I set-aside the award of the Labour Court. Since the workman has rendered service of almost three years from September, 1999 to July, 2001, I deem it appropriate to grant him consolidated amount of compensation of ₹1,50,000/-, to be paid to the workman. The Management is directed to make the payment of the aforementioned amount of compensation within a period of three months from the date of receipt of certified copy of this order, failing which it shall entail interest @ 12% per annum.

The writ petition stands disposed of.

August 07, 2015
ramesh

(AMIT RAWAL)
JUDGE