

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1561 of 2013

Date of Decision: 29.10.2015

Ram Karan

... Petitioner

Versus

Presiding Officer, Industrial Tribunal
cum Labour Court, Rohtak and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Bhupinder, 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.

1. On the date when notice of motion was issued in the present case on January 25, 2013 this Court passed the following order:-

*“Present: Mr. R.K. Malik, Sr. Advocate with
Ms. Renu, Advocate for the petitioner.*

In response to the demand notice, the Sub-Divisional Engineer, Public Health Sub-Division No.2, Bhiwani, by his letter dated 24.3.2003 with reference to the petitioner's demand notice dated 4.3.2003 stated as follows:

“On the above mentioned subject you are informed that this department has not kept any employee on daily wages nor department has made any payment of D.C Rate to him.

This complaint is totally false and baseless.”

*This communication has been addressed to the
Labour-cum-Conciliation Officer, Bhiwani.*

After the matter was referred for adjudication, a preliminary objection was taken in which the following was asserted:

“That the reference is not maintainable with present form as it is a case of termination of service. That the petitioner has not coming the Hon'ble Court with clean hands and he has cancelled the true and material facts of the case are like that the plaintiff was initially engaged as key man on Muster Roll as daily wager with effect from 3.6.2k instead of 30.5.2k. Keeping in view the urgency of work and as such there is no question of termination of service of the workman by the respondent department. Because workman himself left the job on 29.11.2k and did not turn on his duty after 30.11.2k.”

Mr. Malik, learned senior counsel also points out to the statement of WW-4/Rajinder in which it has been deposed that in the photo copy of the log book from 1.1.2002 to 31.1.2003, there are signatures of the witness and the petitioner-Ram Karan and the same have been exhibited on record as Ex.W-6. Whereas for some strange reason, the Labour Court has returned a finding against the workman for non production of the record. Argument is that when the photocopy is produced, the onus is shifted on the management to produce the original.

Notice of motion for 27.2.2013.

Ms. Tanisha Peshwaria, D.A.G. Haryana, who is present in the Court accepts notice on behalf of the State of Haryana and prays for time to file reply.

Process dasti as well.

In case the Sub-Divisional Engineer, Public Health Sub-Division No.2, Bhiwani who issued the letter dated 24.3.2003 is in service, he is directed to file an affidavit before this Court explaining the letter (Annexure P-1).

A copy of this order be given to State counsel dasti under the signatures of Bench Secretary of this

Court.”

2. In response, the Sub Divisional Engineer, Punjab Health Engineering, Sub Division No.2, Bhiwani has filed an affidavit dated September 12, 2013 verified at Bhiwani stating that the then Sub Divisional Engineer has submitted a reply to the demand notice served by the workman in a hurry without going through the record and professing at the same time that while submitting reply to the claim statement the whole record/muster roll were inspected. It is discovered that the Sub Divisional Engineer is a retired person by the name of Shital Parshad Jain. He retired on October 31, 2006. He has not filed an affidavit as sought but he has written a letter to the SDE which is rather non-committal. He is settled in Rohini, Delhi. Since he has retired he is excused from initiating adverse action this Court may have contemplated against him. It now stands confirmed that the stand taken in Annexure P-1 was false.

3. The workman has approached this Court for setting aside the award dated May 07, 2012 passed by the Presiding Officer, Labour Court, Rohtak.

4. He assails the findings of the Labour Court recorded in para.22 of the award holding thereby wrongly that the claimant-petitioner has “miserably failed to prove in the instant case that he had worked for 240 days or not for the last 12 preceding calendar months, so the workman again cannot be held entitled to any relief whatsoever”. The burden was on the workman to prove that he had worked as a Keyman from May 30, 2000 to February 01, 2003 in the respondent establishment. The period of service attributed by the management is June 03, 2000 to November 27, 2000 with

considerable breaks in service and this according to the Labour Court has been corroborated by the statement of MW-1 S.K. Tyagi. The total number of days served is 105 for the aforesaid period. But the workman is not without evidence on the moot point at his command. He produced a photocopy of the log book/attendance register in evidence in which his and Rajinder's presence was marked continuously from June 01, 2000 to January 31, 2003. An attempt was made by the management to palm off the workman as employed through and working under a contractor but no document was produced to prove this relationship.

5. The learned Senior counsel appearing for the petitioner, Mr. R.K. Malik submits that once photocopy was produced covering the period affirmed by the workman then the onus shifted on the management to refute the assertion by producing original record for the aforesaid period to dispel doubts. This was not done and, therefore, an adverse inference ought to have been drawn by the Labour Court to hold that the petitioner served for the period asserted and, therefore, the jurisdictional fact was accomplished on record.

6. Mr. Malik puts it like this. He says that when petitioner raised a dispute and served demand notice for illegal termination the stand of the department was that he had not even worked for a day. When the Labour Court took cognizance of the industrial dispute on a reference by the appropriate Government and the workman filed his claim statement the department admitted that he had worked but from the period June 03, 2000 to November 29, 2000 on daily wages. When the workman produced a photocopy of the attendance register which revealed rendering service as

claimed by him, the Department failed to produce the original record and this is where the fatal error has been committed by the Labour Court by not correctly appreciating discharge of burden of proof and the shifting onus. The department was the custodian of its public record to which the workman had no ready access but still he did his best to produce at least the photocopy thereof which are neither admitted nor denied by the department. If an adverse inference is drawn from non-production of original record then it follows sequitur that a presumption will arise on the truth of the statement of the workman based on the photocopy, which document speaks for itself. It may be true that the initial burden lies on the claimant just as it does on the plaintiff in a suit and burden is cast on the petitioner to discharge the burden and prove his case entitling him to relief and not to depend on the weaknesses of the defendant's case. But when the Court deals with muster roll record in a Government department regulated by rules and the provisions of labour laws with respect to weeding out of documents by orders passed formally in writing then the department cannot lightly get away by hiding its record which is the best evidence and succeed by its lack of producing the original evidence of which a photocopy was available on the file and could have been accepted as secondary evidence by adverse inference. Therefore, no fault can be attached to the detail table of working days of the petitioner Ram Karan placed at R-1. The log book is maintained in the regular course of business at the Tubewell site where the petitioner was deputed to work at least for the days admitted by the management. The workman had produced Rajinder a co-employee as WW-4. Rajinder, who was an operator at the water supply Tubewell on Tosham Road at Bhiwani.

He identified his signatures on the photocopy from January 01, 2001 to December 31, 2001 and thereafter from January 01, 2002 to January 31, 2003. These were Exs.W-5 and W-6 on the record of the Labour Court and witness deposed that signatures of Ram Karan were recorded in routine for the period worked as identified by the witness. He even remembered Ex.W-3 which is a direction to him from the Junior Engineer and to Ram Karan in writing to sort out the complaint of consumers. However, the exhibition of documents W-5 and W-6 were objected to. Rajinder was subjected to cross-examination and he deposed that he had not brought the original record of Exs.W-5 and W-6. He said that Exs.W-5 and W-6 are not copies of log book since log book used to be placed at Ghanta-Ghar with the Junior Engineer. He spoke many times against Ram Karan but said ultimately that he will produce the original register of Exs.W-5 and W-6 within 15 and 20 days but this was never done even though the cross-examination was deferred on the request of the Additional District Attorney and the witness was directed to produce documents. It is significant that Rajinder was an operator at the Tubewell and was called by the workman as his witness but nothing said in the statement can be taken as true or false unless the originals of Exs.W-5 and W-6 were produced and examined for their evidential worth. If WW-4 Rajinder failed to produce them then management should have done so as Rajinder did not have official custody of the original record which could have only come from superior officers/ dealing hands and not from lowly operator of a Tubewell run by the management. In similar vein the testimony of MW-1 S.K. Tyagi would also remain dubious till the original record of the muster rolls were not examined.

7. To reach the truth the Labour Court should have itself issued a judicial fiat to the management to produce the record and not to permit them to play games with the Court and the rights of the workman. All these fine aspects have not been present in the mind of the Labour Court and random reliance on decisions in the cases cited in the judgment can be of no help to unravel the factual situation as to the period of service rendered. When the Labour Court non-suits the petitioner on jurisdictional fact on non-completion of 240 days of service preceding the 12 calendar months on the date of the alleged termination then the Labour Court itself was on slippery ground by drawing presumption that 240 days were not complete without first drawing an inference adverse to the management in non-production of the original record of the muster rolls/attendance register/log book or by whatever name called, but coming from official quarters. It is a rampant malady in the departments of Government to withhold original record of muster rolls from the labour court and more often than not the real reasons never come to light and therefore in cases where monetary relief is granted including reinstatement to service, the financial impact should be shifted by court to be borne by erring officials in order to compensate the exchequer of the liability incurred by reason of Court orders after fixing responsibility.

8. Towards this end the respondent-Department is directed to institute an inquiry and to fix the responsibility on erring officers/officials including Shital Parshad Jain albeit retired from service for making a false declaration Annexure P-1 which position has been conceded in the affidavit of Sanjeev Kumar Tyagi, Sub Divisional Engineer, Public Health Engineering, Sub Division No.2, Bhiwani dated September 12, 2013. False

statements cannot be supported by the rush and hurry of administration.

9. For the foregoing reasons, this petition is allowed. The impugned award dated May 07, 2012 is set aside. Adverse inference is drawn against the management for withholding original record which is read in favour of the petitioner. There is a legal presumption that he has served for the period claimed and it follows that the termination was brought about in an illegal manner in breach of the mandatory prerequisites of section 25-F of the Industrial Disputes Act, 1947. Applying the law in **State of Uttar Pradesh v. Charan Singh**, (2015) 8 SCC 150 while dealing with *pari materia* provision in the Uttar Pradesh Industrial Disputes Act, 1947 where relief was granted for illegal termination for want of compliance of Section 6-N of the local Act which was declared *void ab initio*. Thus, the petitioner is reinstated to service. He would, however, take 50% of the back wages from the date of demand notice as just and equitable monetary compensation to meet the ends of substantial justice.

(RAJIV NARAIN RAINA)
JUDGE

29.10.2015

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