

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

CWP No.15844 of 2013 (O&M)
Date of Decision:04.05.2015

Punjabi University, Patiala

. . . .Petitioner

Versus

Presiding Officer, Industrial Tribunal and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vipul Jindal, Advocate,
for the petitioner.

Mr.Vikas Singh, Advocate,
for respondent No.2.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the award of the Industrial Tribunal dated 11.2.2013, whereby respondent No.2/workman has been ordered to be reinstated with continuity of service but without backwages.

Learned counsel for the petitioner has argued that respondent No.2/workman had worked for 233 days, therefore, the provisions of Section 25-F of the Industrial Disputes Act, 1947 [for short 'the Act'] were not attracted. However, the Tribunal has added the rest days including Sundays and made it more than 240 days to apply Section 25F of the Act. It is submitted that the workman has himself admitted that he had been paid wages being a dailywager for the days he had actually worked. He has also admitted that he had

been paid ₹68/- per day and if the said wages is multiplied with the days he had worked, it comes to 233 days. In support of his submission, he has relied upon a Division Bench judgment of this Court in the case of **“Ram Gopal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad and another”** 2012(3) CLR 983.

In reply to this argument, learned counsel for respondent No.2/workman has submitted that MW1 has stated that the daily-wagers are paid the wages including that of the rest days.

I have perused the record and found that the statement of MW1 is inconsequential in view of the statement of the workman and the documentary evidence from which it is proved that he had not worked for 240 days as required under Section 25-F of the Act.

The question thus would be *“whether Sunday can also be included to calculate 240 days in case of a daily-wager?”*

In this regard, the judgment in the case of Ram Gopal (Supra) is clearly on the subject in which the reliance has been placed on a Full Bench judgment of this Court rendered in CWP No.15278 of 2000 titled as **“Executing Engineer, Public Health Division No.1, Panipat Vs. Sanjay Rana and another”** decided on 3.12.2010 in which it has been held that in a case of a dailywager, Sunday and other holidays are not to be counted because he is not paid any salary for that day. The first question raised by the petitioner is thus decided in his favour.

Learned counsel for the petitioner has further argued that in para 17 of the award, the Tribunal has held that there is violation of Section 25(G) & (H) of the Act because after the termination of service of the petitioner, the respondent No.2 has

employed other persons on the same post. In this regard, he has relied upon a judgment of this Court in the case of ***“The Executing Engineer P.W.d. (B/R) Branch, Jhajjar Division Jhajjar Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another”*** 2009(2) SCL 605 to contend that in a case of dailywage employee, the non-compliance of Section 25-G & 25-H, would not entitle him for reinstatement.

In this regard, learned counsel for respondent No.2/workman has referred to a decision of this Court in the case of ***“The General Manager, Punjab Roadways, Tarn Taran Vs. Sardar Masih and another”*** 2007(2) SCT 763 to contend that completion of 240 days is the requirement of Section 25-F and not of 25-G and 25-H.

I have heard both the counsel for the parties in this regard as well.

There is no dispute that if a workman has not worked for 240 days and his service is terminated in violation of Section 25-G & 25-H, he can still invoke the said provisions as the employer is bound to follow the spirit of last come first go. But the question is *as to whether in the case of dailywager the said principle has to be followed?* In this regard, in the case of ***The Executing Engineer P.W.d. (B/R) Branch, Jhajjar Division Jhajjar (Supra)***, this Court had relied upon a Division Bench judgment of this Court in the case of ***“State of Haryana Vs. Ishwar Singh and another”*** 2008 (3) SCT 788 to observe that in a case of dailywage employee, the non-compliance of the provisions of Section 25G and 25H of the Act would not entitle him to reinstatement but for compensation.

In view of the aforesaid, I find merit in the arguments raised by learned counsel for the petitioner and the finding recorded by the Tribunal in para No.17 of its award is hereby reversed.

Since the workman/respondent No.2 has not completed 240 days, therefore, he is not entitled to any compensation as well. Accordingly, the present petition is hereby allowed and the impugned award is set aside.

04.05.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**