

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 19271 of 2012 (O&M)

Date of Decision: 23.02.2015.

Sadhu

--Petitioner

Versus

Divisional Forest Officer & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Pankaj Mehta, Advocate for the petitioner.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

TEJINDER SINGH DHINDSA.J

The instant writ petition is directed against the award dated 15.12.2011, passed by the Industrial Tribunal-cum-Labour Court, Hisar (Annexure P-3), whereby the reference has been answered against the petitioner-workman and he has not been held entitled to any relief.

Learned counsel appearing for the petitioner would submit that the workman had been engaged as Beldar-cum-Mali on daily wage basis w.e.f. 1.3.1991 and worked continuously up to 31.12.2001 in the Hansi Block of the respondent-Forest Department. Without even passing of a specific order, he was not permitted to work w.e.f. 1.1.2002. The workman had not been given one month's notice assigning reasons for retrenchment nor wages in lieu of notice period nor compensation and as such, there had been a willful non-compliance of Section 25-F of the Industrial Disputes Act. Counsel would vehemently argue that the workman had moved an application before the Labour Court for issuance of directions to the respondents to produce the relevant record in the nature of muster rolls, cash book and bill book etc. for the period 1.1.2001 to 31.12.2001 and inspite of

directions having been issued to the respondent department the requisite record had been withheld and under such circumstances it was imperative upon the Labour Court to have drawn an adverse inference against the employer in so far as ascertaining the completion of 240 days of service in the 12 preceding calendar months taken from the date of alleged termination i.e. 1.1.2002. It is contended that the Labour Court has gravely erred in not drawing an adverse inference under such circumstances and as such, denying to the petitioner the protection of Section 25-F of the Act.

Learned State counsel would, however, argue that the award dated 15.12.2011 is well reasoned and is based on due appreciation of evidence adduced on record and would not call for any interference by this Court in exercise of its writ jurisdiction.

Learned counsel for the parties have been heard at length and pleadings on record have been perused.

There would be no dispute with the proposition that the initial onus is upon the workman as regards proving that he had served 240 days in the preceding 12 months taken from the date of termination so as to avail the protection of Section 25-F of the Act. It is also well accepted that a daily wager would not be in possession of the relevant record in the nature of appointment letter, muster roll, attendance register etc. Under such circumstances, it has been settled by the Hon'ble Supreme Court that the workman would have discharged his onus upon an application having been filed before the Labour Court for production of relevant record towards the period in question. Concededly, in the facts of the present case such an application was moved seeking production of muster rolls, attendance register etc. for the period 1.1.2001 to 31.12.2001 and inspite of directions

having been issued by the Labour Court the requisite record was not produced by the respondent-department. Under such circumstances, the submission raised on behalf of the counsel for drawing of an adverse inference against the department appears to be attractive at first blush.

However, the facts reveal a different picture.

Learned counsel for the petitioner would concede that after initial engagement in the year 1991, the workman had claimed his service to have been terminated in the year 1993 and accordingly, a demand notice dated 27.7.2001 had been served and consequent thereupon the petitioner had been reinstated in service. Thereafter, as per claim of the petitioner his services were terminated yet again on 31.12.2001 which led to the filing of the second demand notice dated 31.3.2004 and upon which the reference had been made which culminated in the passing of the impugned award. If, this be the stand of workman himself, there would be no requirement for production of any record at the hands of the respondent department and for drawing any adverse inference.

It is the case of the workman himself that his services having been terminated in the year 1993, he was reinstated in service only after filing of demand notice dated 27.7.2001. Further stand of the workman himself is that his services were again terminated w.e.f. 31.12.2001. Clearly, reinstatement having come after filing of demand notice dated 27.7.2001 and the workman having been terminated w.e.f. 31.12.2001, he would not complete the requisite 240 days of service in the 12 preceding calendar months.

Under such circumstances, the finding of fact recorded by the Labour Court as regards non-completion of 240 days and protection of

Section 25-F of the Act not being available to the workman, would not require any interference while exercising supervisory jurisdiction.

There is no merit in the instant writ petition and the same is consequently, dismissed.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 23, 2015.
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