

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.20178 of 2013
Date of Decision: July 28, 2015

Mahender Singh

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak &
another

...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.Sandeep Singal, Advocate,
for the petitioner.

None for the respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the order dated 4.6.2013 (Annexure P-5), whereby the application (Annexure P-4) submitted on behalf of the petitioner-workman for allowing secondary evidence has been dismissed.

Mr.Sandeep Singal, learned counsel appearing on behalf of the petitioner submits that the petitioner had moved an application to summon the record from the concerned office and in this regard has produced the zimni orders and the witness has stated that the record is not available. He further submits that as the petitioner had photocopies of the documents,

therefore, he moved an application for proving the same by way of secondary evidence and the Labour Court has committed an illegality and perversity in dismissing the application by holding that the photocopies of the documents do not have the authenticity.

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

The operative part of the order dated 4.6.2013 is reproduced herein below:-

“Having heard the petitioner/workman and perusing the case file it emerges that the documents sought to be produced as secondary evidence cannot be allowed to be placed on the record as the same are the photo copies of alleged attendance register, which has no authenticity as the same does not contain any stamp, signature or any proof of being the record of the respondent/management i.e. Jat Education Society, Rohtak. The workman has also failed to explain how he arranged the photo copies of the original documents, whereas the same cannot be in the possession of the workman, who was allegedly working as Peon under the respondent/management. Therefore, from all the corners the application deserves dismissal and the same is accordingly dismissed. Now to come up for evidence of the workman. Last opportunity is given for 1.8.13.”

From the perusal of the order, it is evident that the Labour Court did not refer to the provisions of Section 65 of the Indian Evidence Act. In order to lead secondary evidence, the foremost requirement of law is to prove its existence. The Labour Court ought to have directed the petitioner to prove the existence of the documents and thereafter lead such

evidence by way of secondary evidence. It could not have commented on the genuinity of the document by merely looking at the photocopies.

In view of what has been observed, the order dated 4.6.2013 (Annexure P-5) is set-aside and the application for leading secondary evidence is allowed. The petitioner is permitted to prove the existence of the photocopies of the documents by way of secondary evidence.

Since there is no representation on behalf of the Management, Labour Court is directed to issue notice to the parties to the lis to appear before it as the proceedings before the Labour Court were stayed by this Court.

The writ petition stands disposed of.

July 28, 2015
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(AMIT RAWAL)
JUDGE