

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 431 of 2011

DATE OF DECISION : July 07, 2015

The Divisional Forest Officer (Territorial), Bhiwani

..... PETITIONER(S)

VERSUS

Suraj Bhan & anr.

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. J.S. Bedi, Additional Advocate General, Haryana,
for the petitioner.
Mr. Manoj Chahal, Advocate, for respondent No.1.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

Vide an award dated 18.12.2007 (Annexure P-1), being assailed in the petition in hand, Labour Court ordered reinstatement of respondent No.1 with continuity of service and 20% back wages. This is how, the petitioner is before this Court.

Parties to the lis, hereinafter, would be referred to by their original positions before the Labour Court.

Workman raised an industrial dispute assailing his termination from service on 16.10.1999. He was employed as Beldar-cum-Mali from 01.12.1982 to 15.10.1999 on daily wages. He alleged to have worked from 01.12.1982 to 30.12.1991 under Arawali Project. During the period of service, his work and conduct remained satisfactory. But with effect from 16.10.1999, he was not allowed to resume duty and his services were verbally terminated. As the termination was not preceded by any notice, notice pay and retrenchment compensation, the same was in breach of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'). So much so, persons junior to the workman were retained in service and, thus, there was even a violation of provisions of Section 25-G of the Act. That being so, he claimed reinstatement with continuity of service and full back-wages.

In short, in a written statement filed by the Management, it was maintained that the workman worked for 24 days in February, 1992, 31 days in October, 1995, 11 days in March, 1996 and 31 days in October, 1998. Further, the Arawali Project had since been closed with effect from 31.07.2001. Accordingly, there was no violation of the provisions of Section 25-F of the Act and the Management was not obligated to comply with the said provision. Likewise, as nobody junior to the workman was retained in service, therefore, there was no

violation of the provisions of Section 25-G of the Act either.

On a consideration of the matter in issue and the evidence on record, the Labour Court concluded that the workman appeared in support of his case as WW-1 and proved his claim. He summoned Kalyan Singh son of Chhotu Ram, Forester, Kadma Block Office of Divisional Forest Officer, Territorial, Bhiwani, as WW-2, but he did not produce the complete summoned record. However, he conceded that the record showed that the workman had served for more than 240 days with effect from November, 1998 to October, 1999. Chattar Singh, DRO office of Divisional Forest Officer, Bhiwani (MW-1) proved the working details of the workman by producing Exhibit MW-1 and Muster Rolls (Exhibits M-2 to M-22), which showed that the workman had served for a period of 238 days in the year 1993. However, in the cross-examination he admitted that he had not produced the complete Muster Rolls of the workman. Further, he had also not produced the records of Territorial Wing. He conceded that the Muster Rolls prior to the year 1995-96 had since been weeded out by the department, so he could not produce the Muster Rolls for the period from 1982 to 1995. As the Management failed to produce the complete summoned record by the Labour Court, in the light of the decision rendered by a Division Bench of this Court in State of Haryana vs. Presiding Officer and another, 2007(1) RSJ 447 (DB), an adverse inference was drawn against the Management. And as Kalyan Singh (WW-2), Forester, an official of the Management,

categorically admitted that in the last preceding year, the workman had rendered service for more than 240 days, therefore, there was an apparent violation of the provisions of Section 25-F of the Act, as the workman was neither afforded any notice nor notice pay and retrenchment compensation. Accordingly, termination of service of the workman was held to be illegal and he was ordered to be reinstated with continuity of service and 50% back wages. As indicated above, this is how, Management is before this Court.

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

Learned State counsel simply seeks to reiterate the submissions that were advanced before the Labour Court and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant petition is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

The relationship of an employer and employee between the parties to the lis is conceded. The specific case set out by the workman in his claim statement was that he served as Beldar-cum-Mali from 01.12.1982 to 15.10.1999. He appeared in support of his case as WW-1 and proved his claim. Kalyan Singh son of Chhotu Ram, Forester, Kadma Block Office of Divisional Forest Officer, Territorial, Bhiwani (WW-2), who was

a summoned witness, though conceded that he had not produced the complete summoned record, but admitted that the workman had rendered more than 240 days of service in 12 calendar months immediately preceding the date of his termination i.e. 16.10.1999. Likewise, Chattar Singh, DRO Office of Divisional Forest Officer, Bhiwani (MW-1) conceded in his cross-examination that he had not produced the complete Muster Rolls of the workman and also he had not produced the record of Territorial Wing. Muster Rolls prior to the year 1995-96 were purported to have been weeded out by the department as they were damaged in floods. But no evidence, least cogent, was produced on record to substantiate that the requisite record for the said period was indeed weeded out and was no longer in possession and custody of the Management. That being so, the Labour Court had rightly drawn an adverse inference against the Management. The workman duly discharged the initial onus by examining himself and summoned the relevant witness with complete record. And once that was so, the burden of proof shifted upon the Management to substantiate that the workman had indeed not served with effect from 01.12.1982 to 15.10.1999, which the Management apparently failed to discharge. In any case, the conceded position on record was that the workman had indeed served the Management for more than 240 days with effect from November, 1998 to October, 1999 i.e. in 12 calendar months immediately preceding his termination from service. And thus, mandatorily the provisions

of Section 25-F of the Act were required to be met with, which concededly, were never complied with. That being so, the termination of the services of the workman was a void ab initio.

The interim order dated 16.08.2011, passed by this Court, shows that a conditional stay was granted to the Management subject to the condition that 50% back wages awarded to the workman by the Labour Court is paid to the workman or deposited before the Labour Court for withdrawal without any security. Counsel for the parties are ad-idem that 50% back wages have since been released to the workman, pursuant to the interim order, as referred to above. An order dated 28.05.2013, passed by this Court, further reveals that the State counsel had informed the Court that the workman had since been reinstated in service on 12.03.2008. Learned State counsel points out that pursuant to the reinstatement of the workman, he served the Management till 15.08.2013 and has been relieved thereafter, on attaining the age of superannuation. The position, that has not been controverted by the counsel for the workman.

Be that as it may, learned State counsel has not been able to point out as to how the conclusion arrived at by the Labour Court is either erroneous in law or contrary to the position on record.

In the wake of the position as sketched out above, there hardly exists any ground, least plausible in law, to interfere with the award rendered by the Labour Court. The

petition, being devoid of merit, is hereby dismissed.

JULY 07, 2015
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(ARUN PALLI)
JUDGE