

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

**Civil Writ Petition No.199 of 2015
Date of Decision:10.03.2015**

The Divisional Forest Officer (T), Forest Division, Rohtak

... petitioner

Versus

Dhanpati and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1. Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Manoj Dhankar, Assistant Advocate General,
Haryana, for the petitioner

ARUN PALLI, J.(ORAL):-

Vide Award dated 02.06.2014 (Annexure P5), rendered by the Industrial Tribunal-cum-Labour Court, Rohtak, Smt.Dhanpati has been ordered to be re-instated with continuity of service and 50% backwages from the date of the demand notice i.e. 12.10.2004. This is how, being aggrieved, the petitioner-Management is before this Court.

In short, in a dispute raised by respondent No.1, she assailed termination of her service, that was purported to have been effected on 01.09.2004. It was averred that respondent No.1, continuously worked on daily wages as Beldar with the petitioner-Management, from 1987 to 2004. She was drawing a salary of

₹ 2550/- per month. She reported for duty on 01.09.2004 at Social Forestry Project of Territorial Wing, Rohtak Ranger, but the officers of the Department did not allow her to perform her duties. Though, no formal order in writing was served upon respondent No.1, but her services were verbally terminated without assigning any reason. It was maintained that termination of her service was in apparent violation of the provisions of Chapter 5-A of the Industrial Disputes Act, 1947 (for short 'the Act'). Persons junior to respondent No.1, were retained in service and certain new workers were also employed, thus, there was also a violation of the provisions of Section 25-G and 25-H of the Act. Further, as the services of respondent No.1, were terminated without any notice, notice-pay or the benefits envisaged under Section 25-F of the Act, thus, her termination was also erroneous, on that score also.

In defence, it was pleaded, inter alia, that respondent No.1, did not work from the year 1987 to 31.08.2004, regularly, with the Department. In fact, she worked for a period of 33 days in the year 1988, 32 days in the year 1989 and 30 days in the year 1990, as reflected in the annexure appended with the written statement. It was maintained that, in fact, respondent No.1, herself, did not report for duty and left the job on her own accord. Nor she made any representation to the competent authority for her re-engagement. Further, as she had never completed 240 days of service in one calendar year, the provisions of the Act, were hardly attracted to the dispute between the parties.

On a consideration of the matter in issue and the

evidence on record, it was found by the Labour Court that respondent No.1 (WW1), herself, appeared in support of her claim and reiterated her stand. Naresh Kumar (WW2), Forester, office of DFO, Rohtak, stated in his testimony that respondent No.1 had worked for 9 days in the month of May 1988, for 24 days in the month of June 1988, for 04 days in the month of January 1989, for 07 days in the month of February 1989, for 21 days in the month of June 1989, for 05 days in the month of January 1990 and for 25 days in the month of June 1990. Further, he had also brought the entire record given to him by the Department, which showed that in the month of January 2003, eight muster rolls were issued, out of which he had brought only three. Similarly, out of the nine muster rolls that were issued in the year 2003, he had brought only one. Eight muster rolls were issued in the year 2004, out of which he had brought only six. In May 2003, nine muster rolls were issued, out of which, he had brought eight. In June 2003, six muster rolls were issued, out of which, he had brought four. In July 2003, nine muster rolls were issued, out of which, he had brought seven. In August 2003, six muster rolls were issued, out of which he had brought three. In October 2003, thirteen muster rolls were issued, out of which, he had brought only five. In the month of November 2003, eleven muster rolls were issued, out of which he had brought only five and in the month of December 2003, six muster rolls were issued, out of which, he had brought five. He further conceded that he had not brought any muster roll from January 2004 to August 2004. Likewise, Ashok Kumar (MW-1), Forest Range Officer, examined by the petitioner-

Management, testified that he had not brought the muster roll and muster roll issue register from the year 1996 to August 2004 and record for the month of March 1996 had been destroyed. That being so, it was concluded that the petitioner-Management intentionally did not produce the muster rolls. As, had the complete muster rolls been produced before the Court by the Management, it would have been clear as to whether respondent No.1, actually worked for a period of 240 days in 12 calendar months preceding the date of termination. Consequently, non-production of all the muster rolls, maintained by the Management led to a presumption that the same were intentionally withheld from the Court. Further, the fact that petitioner-Management was an industry was fully borne out from the decision rendered by this Court in **CWP No. 13344 of 2012**, decided on **23.05.2013**, titled as **“Baljeet Singh versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, District Rohtak and others”**. Accordingly, it was concluded that respondent No.1 had actually worked for a continuous period of 240 days in preceding 12 months of her termination on 01.09.2004. Since, her services were terminated without affording any notice and complying with the provisions of Section 25-F of the Act, thus, her termination was wholly, illegal. Accordingly, as indicated above, she was ordered to be reinstated with continuity of service and 50% backwages, from the date of issuance of demand notice i.e. 12.10.2004.

I have heard learned counsel for the petitioner 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 devoid of merit and, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

The specific case set out by respondent No.1 in her statement of claim was that she was employed on daily wages as Beldar in the Social Forestry Project, Rohtak, and under Territorial Wing from 1987-2004. She claimed to have served the petitioner-Management, till 31.08.2004 as her services were terminated w.e.f.01.09.2004. In the written statement filed by the petitioner-Management, it was not denied that respondent No.1, had served w.e.f.1987 to 31.08.2004. All what was stated in defence was that respondent No.1, never worked during this period, regularly. And the details for the period she served showed that she worked for 33 days in the year 1988, for 32 days in the year 1989 and for 30 days in the year 1990. Once, this was not disputed that respondent No.1 worked from 1987 to 31.08.2004, though not regularly and as per her convenience as set out in defence, burden of proof strictly lay upon the petitioner to produce the requisite records for the said period and show as to for how long she had actually served in these 17 years. Particularly, when respondent No.1, pleaded in no uncertain terms that she mostly worked under Social Forestry Project, Rohtak, Tiliyar Nursery, Maharishi Dayanand University CTI, Medical 14-J and

Colleges under the Forest Range, Rohtak. And in the intervals, she also worked under Territorial Wing, Rohtak Range. Whereas Naresh Kumar, Forester, O/o DFO, Rohtak, brought the record that was given to him by the petitioner and deposed that out of eight muster rolls that were issued in January 2003, he had brought only three, out of nine muster rolls issued in May 2003, he had brought eight, out of six issued in the month of June 2003, he had brought only four, out of nine issued in July 2003, he had brought seven, out of six muster rolls issued in August 2003, he had brought three, out of thirteen issued in October 2003, he had brought five, out of eleven issued in November 2003, he had brought five and out of six muster rolls issued in December 2003, he had brought only five. He conceded that he had not brought any muster roll from January 2004 to August 2004. Witness examined by none other than the Management i.e. Ashok Kumar (MW-1), testified that he had not brought any muster roll and muster roll issue register from the year 1996 to August 2004. Ex facie, petitioner failed to produce the requisite records in support of their defence. In the wake of the position as sketched out above, the only and the inevitable conclusion, one is impelled to arrive at, is that, the records were intentionally withheld by the petitioner from the Court. And of course, to deprive respondent No.1 of her rights, she had acquired having served the petitioner for so long. Apparently, no explanation, least cogent, was rendered as to why the relevant records, could not be produced. Nothing is appended even with this petition either. Thus, petitioner left the Labour Court choiceless but to draw an adverse inference against the Department. Not just that,

the petitioner also maintained that respondent No.1, had herself left the job on her own accord and did not report for duty, nor made any representation to the competent authority for her re-engagement. Meaning thereby, indisputably, she was in service till 31.08.2004. Records show that respondent No.1 raised an industrial dispute vide demand notice dated 12.10.2004 i.e.within less than two months of her termination which shows there was no abandonment of duty at her instance. If the petitioner had indeed not terminated the service of respondent No.1, petitioner could always, either in response to the demand notice or even before the Labour Conciliation Officer, could clarify the position and ask respondent No.1 to join the duty. Apparently, the defence set out by the petitioner lacks bona fides.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the Award being assailed in the instant petition. Learned State counsel could not point out as to how the conclusion arrived at by the Labour Court was either contrary to the position on record or suffered from any material illegality. The petition being devoid of merit is accordingly dismissed.

10.03.2015

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JUDGE**