

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

CWP No.2669 of 2012

Date of Decision: 30.09.2015

Narender Kumar

... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum
Labour Court-I, Gurgaon & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manoj Chahal, Advocate,
for the petitioner.

Ms. Vibha Dhiman, AAG, Haryana.

1. To be referred to the Reporters or not? .
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

There is a categorical admission in the written statement filed by the Forest Department before the Labour Court that the petitioner was engaged for the first time in January, 1993. They denied that workman was appointed in February, 1987 as asserted by him. There is a further admission that the plaintiff was remunerated on daily wage basis in the Aravli Priyojna funded by the World Bank and managed by the State of Haryana. The petitioner worked as and when engaged as per the demand of the Forest Department. There is an assertion in para. 3 of the preliminary objections in the written statement that Aravli Priyojna came to an end in June, 2004 but the services of the petitioner were terminated on 1.11.2002. Without any further explanation this Court would assume that the services of the petitioner were terminated in anticipation of the scheme coming to an end. It is easily discernible from the defence of the Forest Department before the Labour Court that the petitioner was

directly connected to the management of the Forest Department in the district concerned.

The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon, in the impugned award dated 7.10.2010 has declined relief altogether to the workman and dismissed the reference holding the workman is not entitled to any relief. The Labour Court from God-knows-where has introduced in para.14 of the impugned award the theory of an intermediary contractor, who was paid for work done by the petitioner in the scheme. The Labour Court records that it is the case of the management that the plaintiff-petitioner had worked on contract for the contractor but this averment is not found on a reading of the entire written statement, which has been read out in Court by Mr. Chahal, representing the workman. The Labour Court has wrongly assumed that the petitioner was not appointed by the Management so the question of illegal termination at the hands of the Forest Department does not arise. The other reason for denying relief is that the petitioner was appointed against a particular scheme and that scheme stands discontinued and therefore, no relief is admissible. At least as far as his reinstatement is concerned, the Labour Court has held that the appointment was for a specified period for a specific work which exists no more. However, the appointment letter has not been produced on record by the management for this Court to see if there is a stipulation in the contract to fall in the explanation contained in Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 (for short 'the Act'). For these reasons, the Labour Court has held that the termination of the petitioner's services is not unjustified.

Heard learned counsel for the parties at length.

The work done by the Labour Court is to say the least slipshod and unsatisfactory. It has grossly misread the written statement and the admissions contained therein which are in favour of the petitioner. There is no contractor in the picture and it appears strange as to how the Labour Court has imagined the presence of an intermediary when it is not even asserted by the management. The management did not even set up a case of employment of the contractor but the Labour Court has non-suited the petitioner on this point as well. No evidence has been discussed by the Labour Court on any of the issues including completion of 240 days of continuous service or the salutary provisions of Section 25-F of the Act and whether they were complied with or not.

It may be true that the initial burden lies on the workman to prove his case but in the face of the admissions made by the Forest Department in the written statement, the onus had shifted on the management to disprove the stand of the workman by production of evidence of the muster rolls etc. It is even more queer that the Labour Court has held that the petitioner had obtained his job through a contractor when there was no contractor except inside the mind of the labour court. The work of the Presiding Officer, Labour Court-I, Gurgaon cannot be appreciated from any angle. The award suffers from the fundamental flaw of misconstruing facts. Neither the appropriate law has been kept in mind nor has it been applied and appropriate to the discussion. There are errors apparent on the face of the award which are non-existent on the record. The award is so vague that judicial scrutiny is an impossible task. Remand was one option but is not adopted as justice can be done from this court without making parties suffer further agony

of trial as the matter can be resolved de hors the award. This is of course a very strange situation encountered by this court as never before.

In the demand notice filed by the petitioner, which has been treated as workman's statement of claim before the Labour Court, he asserted that when his services were terminated no notice/notice pay or retrenchment compensation was paid to him at the time of termination and accordingly, the mandatory provisions of Section 25-F of the ID Act were flouted. When the petitioner asserted that Section 25-F of the Act had been violated, the reply of the Forest Department was that it was wrong to say that benefit of Section 25-F of the Act was not given. However, no evidence was adduced by the management to show before the Labour Court that Section 25-F of the Act had been complied with at the time of retrenchment. But the Labour Court did not go into these issues at all since it remained obsessed by the imagined presence of a contractor between the workman and the management and therefore there was no direct relationship of employment. If that were true, it would be evident that neither Section 25-F nor any other provision of the ID Act would apply albeit without proving a relationship of employer and employee, but this is far from the truth and I find no reason to support the impugned award. It is inherently defective.

Mr. Chahal submits that the petitioner has rejoined the department in the original position as a daily wager in January 1, 2005 and works with the management. This fact is not disputed by Ms. Dhiman on instructions received. This fact is mentioned in para.14 of the award even when the Labour Court was confronted with such a vital fact that the workman had been taken back in service without Court orders and on

the free will of the management then nothing possibly remained to reflect and the relief should have been granted as such a turn of events removed the base of the stand of the Forest Department that the Aravli Project has come to an end in June, 2004, having terminated the services of the petitioner in 2002 and re-employed him on January 17, 2005. In these state of facts, I am of the view that the petitioner has been harassed for no fault of his. His case was truthful. The defence before the Labour Court as it is before this Court is facile and does not warrant any further consideration.

For the foregoing reasons, this petition is partially allowed. The impugned award dated 7.10.2010 is set aside. The termination of the petitioner in 2002 is declared illegal. The petitioner having been reinstated in service pending litigation would be continued in service. He is held entitled to 50% arrears of back wages from the date of termination i.e. 1.11.2002 to 16.1.2005. Since thereafter the petitioner is working in the department and drawing wages for work done, the petitioner is held entitled to costs assessed at Rs.25,000/- of the unwarranted litigation.

(RAJIV NARAIN RAINA)
JUDGE

30.09.2015
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