

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

**Civil Writ Petition No.200 of 2015
Date of Decision:10.03.2015**

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

... petitioner

Versus

Prem Pal Singh 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 31.07.2014 (Annexure P6), that is being assailed, Industrial Tribunal-cum-Labour Court, Rohtak, ordered re-instatement of respondent No.1 in service, with continuity of service with 50% backwages, from the date of demand notice i.e.07.03.2005. This is how, Management is before this Court. Parties to the lis, hereinafter, would be referred to by their original positions before the Labour Court.

Workman i.e.Prem Pal Singh, raised an industrial dispute, vide demand notice dated 07.03.2005 (Annexure P1). In his statement of claim, it was averred that he served the Management

(Department) as Beldar-cum-Mali, continuously from January 1990 to 28.02.2005. However, the workman was not allowed to join his duty on 01.03.2005, as his services were terminated, verbally. It was maintained that the termination of the workman was, thus, in an apparent breach of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'). Further, as persons junior to the workman were still working in the Department, when his services were brought to an end, thus, his termination was also violative of the provisions of Section 25-G and 25-H of the Act. Therefore, termination of the services of the workman be declared to be illegal and reinstatement with consequential benefits, be ordered.

In defence, it was pleaded, inter alia, that the workman was never under an employment of the Department, and, thus, there was no occasion to terminate his services. And, since there was no relationship of employer and employee between the parties, thus, it was wrongly claimed that the workman had been working since 1990 to 28.02.2005, for a sum of ₹ 2560/- per month as pay. Accordingly, the petitioner was under no obligation to ensure the compliance of the provisions of Section 25-F of the Act.

On a consideration of the matter in issue and the evidence on record, the Labour Court arrived at a conclusion that the stand set out by the Management that workman never served the Management, was totally belied by the testimonies of Raje Ram (WW2), Forester, O/o DFO Rohtak and Shamsheer Singh (MW1), Forest Range Officer, Meham, as they conceded that workman did serve the Management, but for 26 days in July 1998, 31 days in

August 1998 and 30 days in September 1998. Therefore, it was observed that the Management had not approached the Court with clean hands. Particularly, when the Management also withheld the service record of the workman from January 2004 to February 2005, without any justifiable cause. That being so, it was concluded that the presumption, which, thus, arises is that the service record of the workman was intentionally withheld by the Management, so as to deprive the workman of his lawful rights. As had the necessary records been produced before the Court, it would have been clear that the workman had worked for 240 days in the 12 calendar months preceding the date of his termination. As a result, it was held that the workman had rendered continuous service for a period of 240 days in the preceding 12 months of his termination on 01.03.2005. And, as the workman was retrenched from service in violation of the provisions of Section 25-F of the Act, his termination from service was illegal. Resultantly, the workman was entitled to reinstatement along with continuity of service and 50% backwages from the date of demand notice i.e. 7.03.2005. As indicated above, this is how, being aggrieved against the said Award, the Management is before this Court.

I have heard learned State 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 Management, in its written statement, completely denied the relationship of employer and employee with the workman. It was maintained that the workman was never in the employment of the Department. Consequently, there was hardly any occasion to ensure compliance of the provisions of Section 25-F of the Act, when his services were purportedly brought to an end. However, Raje Ram (WW2), Forester O/O DFO, Rohtak and, even the Management witness i.e. Shamsheer Singh (MW1), Forest Range Officer, Meham, testified that the workman was indeed in employment of the Management, though, he served for 26 days in July 1998, 31 day in August 1998 and 30 days in September 1998. That being so, the defence set out by the Management was completely falsified and it was rightly concluded by the Labour Court that the Management had not approached the Court with clean hands. Even otherwise, the specific case set out by the workman was that he continuously served the Management as Beldar-cum-Mali, from January 1990 to February 2005, as he worked at different places in Kalanaur Beat under Rohtak and Meham Range. So much so, it was specifically averred that he had worked under different guards of the Department i.e. Sarv Sh.Umed Singh, Ishar, Ranvir and Jai Singh etc. Once that was so, the onus strictly lay upon the Management to prove, by producing the requisite records, that workman never served

the Management from January 1990 to 28.02.2005, continuously. Something, that was imperative in the situation. Apparently, Management failed to lead any evidence, least cogent, in this regard, and, thus, an adverse inference was rightly drawn against the Department. An analysis of the Award dated 31.07.2014 (Annexure P6), further shows that neither Raje Ram (WW2) nor Shamsheer Singh (MW1), despite having been asked, produced the complete service record of the workman. Further, no cogent reason was assigned by the Management for its failure to produce the service record of the workman from January 2000 to February 2005. That being so, the inference drawn by the Labour Court that the necessary records were intentionally withheld by the Management, so as to deprive the workman of his legitimate rights, was quite natural and in place. Plea of the Management that workman was never employed with them, having been proved to be false, whether Management could still justify the termination, is yet another question. Be that as it may, once the workman purported to have served continuously for 15 years in Kalanaur Beat under Rohtak and Meham Range, no cogent explanation is rendered on record, as to why attendance register, muster rolls, payment of salaries register, for the relevant period, were not produced. Particularly, when workman even named all the guards of the Department under whom he had worked. Nothing is placed on record even with this petition.

Learned State counsel could not point out as to how the conclusion that was arrived at by the Labour Court, was either contrary to the position on record or suffered from any material

illegality.

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. The petition being devoid of merit is accordingly dismissed.

10.03.2015

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(ARUN PALLI)
JUDGE