

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 2022 of 2015 (O&M)

Date of Decision: 09.02.2015

M/s Sood Industries

--Petitioner

Versus

Presiding Officer & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Amarjit Singh, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J

The instant writ petition is directed against the award dated 27.11.2013 (Annexure P-7), passed by the Industrial Tribunal-cum-Labour Court, U.T., Chandigarh, whereby the reference has been answered in favour of the workman/respondent no.2 and he has been held entitled to reinstatement with continuity of service along with 25% back wages.

Learned counsel appearing for the petitioner-management has argued that the Labour Court has erred in not giving due weightage to the documents adduced in evidence towards Ex. MW-2/T to MW-2/12 which were in the nature of E.S.I returns and which reflected that the workman was not on the rolls of the management and had not worked for even a single day. It has been argued that these returns were sufficient to substantiate the plea of the management that there existed no relationship of master and servant and as such, the question with regard to termination and non-compliance of the provisions of Industrial Disputes Act did not even arise. Another limb of the argument raised by learned counsel is that under the relevant provisions of the E.S.I (General) Regulations, 1950 the half yearly returns for the period 1st of April to 30th of September are required to be filed on or before the 11th of November of that year and as such, the E.S.I

returns that had been adduced in evidence before the Labour Court have been filed as per law on 3.11.2006. Contention raised is that under such factual scenario the Labour Court has wrongfully discarded the returns by terming the same to have been filed subsequent to the date of serving of the demand notice dated 20.7.2006. It has also been contended that in so far as the relevant record in the nature of attendance register/muster rolls etc. were concerned, the management was not able to produce the same and due justification had been offered and a reference had also been made to D.D.R dated 20.7.2006 as regards the missing report of a bag having been stolen which was containing the register of attendance and payments for the year 2005-06. Counsel would argue that the Labour Court has even turned a blind eye towards the D.D.R./stolen report dated 20.7.2006 and has proceeded to record a finding in favour of the workman.

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

The claim set up on behalf of the workman as per demand notice which was also treated as statement of claim was that he was engaged by the management as Lock Fitter in the year 1999 and had continued in service till 17.7.2006. His services had been terminated only for the reason that he had demanded an increase in his salary. In the reply to the claim statement filed on behalf of the management and the same having been placed on record and appended at Annexure P-2 along with the instant writ petition categorical stand was taken that the workman had never served with the management and hence there was no question of terminating his services and there never existed any relationship of master and servant.

Learned counsel appearing for the management has not controverted the factual aspect as regards the workman having moved an application before the Labour Court for the management to produce the record for the relevant period and inspite of an order dated 31.1.2012 having been passed directing the management to produce the attendance register and wage register for the period 1.1.2001 to 17.7.2006, yet, such record had not been produced. The response coming forth from the counsel is that record for a certain period had been stolen and in relation to the other period being not available as the same had been termite infested.

The deposition of management witness MW-3 Basant Singh would be a clincher. In his deposition in cross-examination and which has been placed on record he had stated as follows:-

“No inquiry was conducted as the worker was never terminated by the management. He himself abandoned his service. It is wrong to suggest that he did not abandon his service and he was terminated. No letter was written to workman regarding his alleged absence. No compensation was paid to the workman as he was never terminated by the management. It is incorrect that neither persons have been appointed in place of the present worker.”

Such deposition made by the management witness itself would demonstrate that a contradictory stand had been adopted. On the one hand in the reply to the claim statement it had been stated that the workman had never been engaged and there was no relationship of master and servant and on the other hand MW-3 had deposed that the management had never terminated the services of the workman and who rather abandoned the job.

In the considered view of this Court the Labour Court has rightfully discarded the version of the management and for cogent and valid basis has drawn an inference against the management as regards the

workman having worked for a period of 240 days in the preceding 12 months taken from the date of termination i.e. 10.7.2006.

It is by now well settled that findings recorded by the Tribunal cannot be challenged in proceedings before a Writ Court on the ground that the evidence adduced was insufficient or inadequate to sustain the same. Adequacy or insufficiency of evidence led on a point and the inference of fact to be drawn from the said findings are within the exclusive domain of the Tribunal. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishanan and others, AIR 1964, S.C. 477*.

The management having failed to produce the record of attendance/payment registers etc. for the period in question inspite of the workman having filed an application in such regard, the initial onus that was upon the workman had stood discharged. The Labour Court has rightfully drawn an adverse inference in the matter and against the management. There was no delay on the part of the workman in raising the industrial dispute as the demand notice was served within a period of weeks.

This Court does not find any infirmity in the impugned award directing the workman to be reinstated along with continuity of service and having restricted the back wages to 25%.

No merit, petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 09, 2015
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Whether to be referred to Reporter? Yes.