

“Respondent has stated that the workman has not completed the service of 240 days continuously. Hence, he is not entitled for reinstatement while workman in his affidavit stated that he had completed 240 days service during the 12 preceding calendar months from the date of termination. The management has not brought any record i.e. muster rolls/attendance register etc. Sh.

CWP No.23178 of 2014

[2]

Karmesh Bhardwaj, Ld. Govt. Pleader has argued that the muster rolls and other relevant record was destroyed and was weeded out. Hence, the same could not be produced in the court. This shows that the respondent deliberately withheld that relevant documents. Hence, an adverse inference is drawn against the management. Hence, the stand of the workman that he had completed the service of 240 days in the 12 preceding calendar months stands proved in favour of the workman.”

Counsel for the petitioners has argued that it was for the workman/respondent no.1 to prove that he had worked for 240 days but in the absence of any documentary evidence, the Tribunal has committed a patent error in shifting the onus upon the management.

After hearing learned counsel for the petitioners and examining the record, I am of the considered opinion that there is no error in the order of the Tribunal because the respondent no.1 was a daily wage worker who has not been given any order of appointment and the only evidence used in such a case is the presence recorded by the petitioners in the muster roll/attendance register which is maintained by the management, but in order to frustrate the claim of the workman, a statement has been made that the muster rolls/attendance registers have been destroyed and weeded out, without leading any evidence to that effect. If the petitioners were claiming that the relevant record was destroyed or weeded out, some evidence should have been led to prove this fact but in the absence thereof, no reliance can

CWP No.23178 of 2014

[3]

be placed upon an oral assertion made by the petitioners.

In view thereof, I do not find any merit in the present writ petition to tinker with the well considered order passed by the Tribunal and hence, the same is hereby dismissed.

April 21, 2015
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(Rakesh Kumar Jain)
Judge