

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

CWP No.22476 of 2015

Date of decision: 19.10. 2015

Divisional Forest Officer, Fatehabad

... Petitioner

Versus

Sh. Ram Kumar & anr.

... Respondents

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

Present: Mr. JS Bedi, Addl. A.G., Haryana,
for the petitioner.

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

RAJIV NARAIN RAINA, J.(Oral)

The admitted position is that the functionaries of the Divisional Forest Office (Territorial) Divisional Forest, Fatehabad, and the 1st respondent workman entered into a settlement under Section 12(4) of the Industrial Disputes Act, 1947, during the conciliation proceedings where the Forest Department committed itself to take the 1st respondent Ram Kumar back in service. The settlement was not honoured by the Forest Department and the Labour Officer had written a letter to the Labour Commissioner, Haryana, Chandigarh, to take action against the officials of the department under Sections 29-T and 29-U of the ID Act.

In this background, the workman's case before the Labour Court was that he was taken back in service on relief from the pain of penalty proceedings under the Act and continued to serve as daily wager till 2003 when his services were again terminated. The Labour Court has agreed with the argument and held the case to be falling within the four corners of retrenchment and because of non-compliance of the pre-

requisites of Section 25F of the Act an order of reinstatement has been passed with continuity of service and full back wages with 8% interest.

The Forest Department is before this Court in this petition filed under Articles 226 & 227 of the Constitution of India praying that the award suffers from errors of law and fact and therefore, deserves to be set aside. It is their submission that the workman did not summon record from the Forest Department to prove his case regarding completion of 240 days in the preceding 12 months from the date when the termination was alleged to have been effected. When the workman pleaded non-compliance of Section 25F of the Act and that the mandatory procedure laid down was not followed and he possessed the jurisdictional facts entitling him to relief, the onus shifted on the management to plead and prove that the workman had not completed 240 days of continuous and uninterrupted service within the meaning of Section 25B of the Act for the period required. If the Forest Department failed to produce evidence of the jurisdictional fact of clocking 240 days then the Labour Court committed no error in accepting the version of the workman that the termination was illegal.

When the State does not dispute that a settlement was arrived at in conciliation proceedings then it must admit its obligation to honour the settlement because the management in the Forest department is not a private employer but a department of the State Government, which is expected to act as a model employer. Besides, its actions must speak formally in writing and State cannot be heard to plead before this Court that what it does is oral. These defences taken in court do not redound to

the credit of the State Government when it prosecutes or faces litigation.

The defence of the State has not been favoured by the Labour Court and I find hardly any good reason to interfere with the award.

Consequently, the petition is found without any merit and certiorari would not issue sans error and is ordered to be dismissed.

(RAJIV NARAIN RAINA)
JUDGE

19.10.2015
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