

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

Civil Writ Petition No.4563 of 2013

Date of decision: 16.01.2015

The Principal, Chief Conservator of Forests and another

... Petitioners

Versus

Smt.Birmati and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Manoj Dhankhar, AAG, Haryana
for the petitioner.

Mr.Sandeep Thakan, Advocate,
for respondent No.2.

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

RAJIV NARAIN RAINA, J.

The State in the Forest Department has filed this petition against the impugned award dated 4th April, 2011 passed by the Presiding Officer, Labour Court, Rohtak in Reference No.120 of 2000. When this matter came up for motion hearing, the Law Officer appearing for the State of Haryana had centred his argument on paragraph 13 of the award resisting it on the ground that the worker had not rendered continuous service of 240 days in any of the calendar years from the claimed period of service rendered from July, 1994 till March, 1999. Muster rolls were accepted on the record of the Labour Court as Ex.M1 to Ex.M27. The details of the working days from these muster rolls have been mentioned in

tabular statement Ex.M28. It was deposed through management witness that the worker had not turned up for work after March, 1999 to perform her duties. The learned Labour Court, however, found that the 13 number of muster rolls produced before it covered periods few and far between from July, 1994 to March, 1999. The remaining muster rolls were not available since they have been damaged by floods. If they were not available, then they cannot be produced in future as well observed the learned Labour Court. The Court *a quo* held that termination of services of the workman were not compliant with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947, upon which, the Court thought it fit to award reinstatement with continuity of service and 50 percent back wages from the date of demand notice, i.e., 26th May, 1999. The relief has been granted after appreciating the evidence on record and would normally not be amenable to supervisory jurisdiction exercised by this Court against awards of the Labour Court and Tribunals so as not to disturb findings of fact which appear neither to be perverse, arbitrary nor irrational. The impugned award is, therefore, liable to be maintained.

2. The argument that the work in the Forest Department is seasonal in nature and is, therefore, not regular, is not reason enough not to comply with Section 25-F of the Industrial Disputes Act, 1947 so long as there has been a retrenchment without following due procedure. It may not be out of place to mention that the Forest Department had earlier approached this Court against the award dated 20th November, 2007 passed by the Industrial Tribunal, Labour Court, Rohtak which had awarded reinstatement with continuity of service and 50 percent back wages from the date of the demand notice. The matter was remanded for fresh

determination. The management again failed before the learned Labour Court despite the record of muster rolls having failed to be summoned or produced by the petitioner management. The learned Labour Court has drawn an adverse inference from non-production of the record for which purposes the impugned award was set aside in CWP No.7865 of 2009 decided on 2nd March, 2010 by the learned Single Judge and the case was remanded to the learned Labour Court for fresh adjudication.

3. In the second round before the Labour Court, the worker summoned the original record from the Forest Department and it was produced in bits and pieces as noticed by the Labour below. The lacuna left in the earlier award stands cured in the fresh award to the extent of production. When notice of motion was issued in this case on 1st March, 2013, the operation of the impugned award was stayed to the extent of award of back wages. It was, however, directed that in case a request is made by the worker and she offers to serve as a daily wager, the Forest Department would be at liberty to consider that request sympathetically. The request was accepted and the respondent joined service as a daily wager and has been working since.

4. In the reply filed by the respondent to the written statement, she has placed her identity card as R-1 which has been issued by the Forest Department, Haryana which shows the posting date as 1st July, 1992. The worker produced a co-employee Dhan Singh WW2 who deposed that while he was employed in Tosham Block, the respondent-worker was with him performing duties in the year 1992. This piece of oral evidence appears to have escaped the notice of the learned Labour Court which adds another two years of service making it seven years of service in all as a *Dainik*

Vatan Bhogi [daily wager].

5. For the foregoing reasons, I find no justifiable reasons to interfere with the elaborate award passed by the Labour Court where the case is discussed threadbare. The petition to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

January 16, 2015
Paritosh Kumar