

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

118

Civil Writ Petition No.2906 of 2015

Date of Decision:07.04.2015

Ram Bhateri

....petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Gurgaon, Haryana and others

.....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.Mohammad Arshad, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Award rendered by the Industrial Tribunal-cum-Labour Court, Gurgaon, dated 01.10.2010 (Annexure P1), is being assailed by the petitioner, since her claim for reinstatement, with consequential relief was declined.

Briefly, in a dispute raised by the petitioner, she claimed to have been appointed as Mali on 06.08.2003. And was drawing a sum of ₹ 2700/- per month by way of wages, when on 06.08.2007, her services were illegally brought to an end. Since, service of the petitioner was terminated in breach of provisions of Section 25-F of

the Industrial Disputes Act, 1947 (for short 'the Act'), the same was illegal and the petitioner was entitled to reinstatement with consequential relief.

In defence, it was pleaded, inter alia, that there was no relationship of employer and employee between the parties. It was maintained that the workman was never appointed as Mali by the Management. In fact, post of Mali was a cadre post in the Department and the appointments to the said post could only be made on the recommendations of the employment exchange or Staff Selection Board. Workman was never recommended by either of the two.

Labour Court, in reference to certain decisions rendered by the Hon'ble Supreme Court and this Court, observed that the onus to prove that the petitioner had indeed worked for more than 240 days in one calendar year, preceding the date of her termination, was upon the petitioner herself. However, no evidence, least cogent, was led to prove that the workman was actually employed by the Management and she served the Management w.e.f.06.08.2003 to 06.08.2007. Accordingly, on an analysis of the matter in issue and evidence on record, it was concluded that since the workman was never appointed by the Management, thus, there could be no occasion for terminating her services. As a result, the reference was answered against the petitioner. Thus, this petition.

I have heard learned counsel for the petitioner and perused the paper book.

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 is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

The claim set out by the petitioner was that she was appointed as Mali on 06.08.2003 and served till 06.08.2007, when her services were brought to an end. She claimed to have been drawing ₹ 2700/- per month as wages. On the contrary, the specific plea set out by the management was that she was never employed by the management. That being so, the burden of proof, to prove that the petitioner was indeed employed by the Management and served w.e.f. 06.08.2003 to 06.08.2007, was upon the petitioner, herself, which she apparently failed to discharge. Concededly, no evidence, least cogent, was led by the petitioner to substantiate her claim. Her affidavit (Ex.P1), that was tendered in evidence, alone, was not sufficient to prove the relationship of employer and employee between the parties. Nothing, such as letter of appointment, identity card, ESI card, PF slip etc., was brought on record. In fact, she testified in her cross-examination that she possessed no document to show that she was employed with the management. Nothing is placed on record even with this writ petition either. Learned counsel for the petitioner concedes that no application was moved by the petitioner before the Labour Court to requisition the relevant records to substantiate her claim. That being so, the only and the inevitable conclusion, Labour Court, could arrive at, was to answer the reference against the petitioner. Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the Labour

Court was either contrary to the position on record or suffered from any material illegality.

Not just that, the Award that is being assailed, was rendered by the Labour Court, as back as on 01.10.2010, i.e. nearly over 4 and ½ years ago. Nothing is averred, least a cogent explanation, in the petition, to explain such a gross and inordinate delay in filing the instant petition. In fact, this petition is liable to be dismissed being barred by delay and laches alone.

In the wake of the position as set out above, no interference in exercise of power under Articles 226/227 of the Constitution of India, is warranted. The petition being devoid of merit is accordingly dismissed, in limine.

07.04.2015

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(ARUN PALLI)
JUDGE