

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

Civil Writ Petition No.527 of 2013

Date of decision: 19.11.2015

Ajit Singh

... Petitioner

Versus

Divisional Forest Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashwani Bakshi, Advocate,
for the petitioner.

Mrs.Vibha Dhiman, AAG, Haryana.

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 first round of litigation in reference No.32 of 2000 under Section 10(1)(c) of the Industrial Disputes Act, 1947 [for brevity, "the ID Act"] resulted in a remand order passed by this Court on May 17, 2010 in CWP No.880 of 2010 titled Ajit Singh v. Divisional Forest Officer, Aravali Project and another. This Court faulted the award which had declined reference vide award dated August 5, 2008. No finding was returned by the previous labour court whether the petitioner had completed 240 days of service in the 12 preceding months from the date of termination or not. This

question was raised by Mr.Ashwani Bakshi learned counsel appearing for the petitioner in CWP No.880 of 2010 persuading the court that the question had to be answered in order to decide the rights of the workman as to whether he would be entitled to some compensation or not on account of illegal termination and the finding on that aspect would be essential.

2. The argument was accepted and the Labour Court was directed to make a fresh award in accordance with the law. It may be noted that the Labour Court had restricted its examination to the question of exception in Section 2(oo) (bb) of the I.D. Act and the case the court thought fell in the arena of contractual employment and thus the petitioner was not covered by the definition of 'workman' under Section 2(s) of the I.D. Act. These reasons were not found good by this Court in the order dated May 17, 2010.

3. In the fresh order passed on remand, the Labour Court has again dismissed the reference and has held on facts that the petitioner had not completed 240 days of continuous and uninterrupted service in any of the years involved and, therefore, he does not possess industrial rights to maintain an action for reinstatement and the consequential benefits flowing from illegal retrenchment.

4. When Mr.Bakshi appearing for the petitioner refers to Annexure R-IV annexed with the written statement filed by the State he seeks to urge that there are contradictions in calculation of days in the months with reference to the years 1994 to 1999. The

case of the State is that the workman had not worked for any of the substantive periods except for the years 1995 and 1996 which period accounts for 214 days and 82 days respectively. These figures include Saturdays and Sundays etc. There is another chart at Annexure R-6 which reveals the days worked yearly from 1995 and 1996 as 184 and 118 days respectively and there is a variation in document R-5 which records 214 and 82 days respectively. The other years agitated are either dot balls or fall far short of 240 days.

5. Mr.Bakshi submits that the workman had filed an application dated May 24, 2001 before the Labour Court praying for a direction to the Forest Department to produce record of which 16 items are listed, the last one being the muster rolls registers for the period from 1990 to 1999.

6. It is complained that the management did not file the the documents when they should have filed it to clear doubts. It requires no elaboration that the application dated May 24, 2001 stood subsumed when the impugned award dated August 5, 2008 passed by the Labour Court-I, Gurgaon was set aside on May 17, 2001 and the case remanded for fresh decision in accordance with law.

7. Mr.Bakshi has frankly admitted that in the remand proceedings, such an application was not filed seeking direction to the respondent department to produce the record. From this I would draw an inference that the record must have been adverse to the petitioner if produced and, therefore, he did not chose to

make the request again.

8. I have no reason to upset the pure finding of fact recorded by the labour court that the petitioner had not put in 240 days in any of the years debated. However, the record of the muster rolls relating to the workman for the years 1995 and 1996 were produced on record as R-2 to R-11. Besides, the Aravali Project came to an end and was closed down on October 31, 1999 and, therefore, reinstatement to service is neither possible nor plausible nor can be contemplated. When 240 days of continuous and uninterrupted service within the definition in Section 25-B of the ID Act is not established on the file, then there was presented no occasion for the Labour Court to go into the question of 2(o) (bb) of the Act nor could the question of the initial appointment being inconsistent with Articles 14 and 16 of the Constitution arise in this case and the impugned award dated April 19, 2011 is sustainable only on the finding of fact with respect to status of the claimant on the cornerstones of Section 25-B read with Section 25-F of the ID Act and whether he satisfied the jurisdictional facts. Therefore, compliance or non-compliance of Section 25-F became immaterial. Nor would such an argument have any material bearing on the facts of this case or its ultimate result.

9. I have, therefore, no reason to interfere with the conclusion of the Labour Court in its award which is legally sustainable in denial of relief to the workman whose rights under the ID Act had not matured till the time of termination and would on the above conspectus of facts and circumstances dismiss this

petition as without any substance.

(RAJIV NARAIN RAINA)
JUDGE

November 19, 2015
Paritosh Kumar