

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.6071 of 2014

DATE OF DECISION: JANUARY 07, 2015

Mahender son of Sh.Kalua

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-III
Faridabad and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Johan Kumar, Advocate
for the petitioner.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of Civil Writ Petition Nos.5958, 6071, 6072, 6083, 6089 and 6092 of 2014 as identical issue is raised in these bunch of petitions.

2. Challenge in these petitions is to six separate awards passed by Labour Court, Faridabad, all carrying even dates i.e. 30.5.2013 whereby while answering the references, the workmen have been held entitled to a lump sum compensation of ₹20,000/- in lieu of re-instatement in service.

3. Learned counsel appearing for the petitioners in these petitions would submit that the workmen had been engaged as Beldars in the month of June 1993 on daily wage basis and they

worked continuously till December 1999. Their services had been dispensed with without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'), and under such circumstances, the workmen were entitled to reinstatement in service. In the same breath, it has been argued that merely because the workmen had been engaged on daily wage basis cannot disentitle them from claiming reinstatement. It has also been argued that the Management had failed to adduce the relevant record in the nature of muster rolls, attendance register etc. and as such, the assertion made on behalf of the workmen towards having served continuously from 1993 till December 1999 should have found favour with the Labour Court and consequentially, it was the relief of reinstatement in service as opposed to compensation that should have been granted.

4. Having heard learned counsel for the petitioners at length and having perused the pleadings on record, this Court is of the considered view that no basis for interference is made out.

5. The workmen in these connected petitions had asserted in their demand notices/claim statements to have been engaged in 1993 on daily wage basis as Beldars and having worked continuously till 1999. In the replies that were filed before the Labour Court on behalf of the Management, a categorical stand had been taken that the workmen had been engaged on daily wage basis and had worked intermittently between July 1993 to October 1998 with major breaks in service. The details of attendance during such period had been attached as Annexure R5

along with replies.

6. The basic issue that was framed by the Labour Court in all these cases was to the following effect:

“Whether the claimant had completed 240 days of continuous service preceding the date of termination of his service under the respondent, if so, its effect? OPW”

7. Perusal of the impugned awards would reveal that the Labour Court has clearly observed that the workmen had not adduced any evidence as regards having completed 240 days in service in the preceding 12 months taken from the date of termination i.e. December 1999. It was also taken note of by the Labour Court that Annexure R5 had been placed on record showing the details of working days i.e. in the case of Mahender (petitioner in Civil Writ Petition No.6071 of 2014) 171-1/2 days in the year 1993, 113 days in the year 1994, 259 days in the year 1995, 47 days in 1996, 97-1/2 days in 1997 and 36 days in 1998, likewise in the case of Nawal (petitioner in Civil Writ Petition No.6072 of 2014) 74-1/2 days in the year 1993, 137 days in the year 1994, 263-1/2 days in the year 1995, 57 days in the year 1996 and 94-1/2 days in the year 1998, in the case of Jaggan (petitioner in Civil Writ Petition No.6092 of 2014) 40 days in the year 1994, 173 days in the year 1995, 47 days in the year 1996, 49-1/2 days in the year 1997 and 29 days in the year 1998, in the case of Ram Charan (petitioner in Civil Writ Petition No.6083 of 2014) 115-1/2 days in the year 1993, 136 days in the year 1994, 248-1/2 days in the year 1995, 29-1/2 days in the year 1996 and

51-51 days in the years 1997, 1998 and 1999, in the case of Smt.Sumari (petitioner in Civil Writ Petition No.6089 of 2014) 119 days in the year 1994, 226 days in the year 1995, 47 days in the year 1996, 100 days in the year 1997 and 34 days in the year 1998, and in the case of Sham (petitioner in Civil Writ Petition No.5958 of 2014) 60 days in the year 1994, 184 days in the year 1995, 40 days in the year 1996, 90-1/2 days in the year 1997 and 22 days in the year 1998.

8. No finding has been recorded by the Labour Court as regards any of the petitioners/workmen having completed 240 days in the preceding 12 months taken from the date of termination i.e. in the month of December 1999 as had been asserted in the demand notices/claim statements. Insofar as the Management having not produced the record, learned counsel appearing for the petitioners would concede that no evidence had been led on their behalf and even the application had not been filed before the Labour Court calling upon the Management to produce the relevant record.

9. The question as regards burden of proof pertaining to completion of 240 days of continuous service in a year has come up repeatedly for consideration before the Hon'ble Supreme Court of India. In **Manager, R.B.I., Bangalore v. S.Mani & Ors., 2005(2) SCT 404**, the workmen raised a contention of having rendered continuous service between April 1980 to December 1982 in their pleadings and in their affidavits. The Labour Court based its decision in favour of the workmen and against the Management in the light of the affidavits filed by the employees and took a view

that since the Management had not produced the attendance registers, the burden on the workmen to prove 240 days of service stood discharged. The Apex Court, however, held that pleadings did not constitute a substitute for proof and the affidavits containing self-serving statements would not be sufficient to prove continuous service of 240 days. It was observed that the workmen had not called upon the Management to produce relevant documents and the initial burden of establishing factum of continuous work of 240 days in a year, which was on the workmen, had not been discharged. On such reasoning, the Apex Court set aside the award of the Labour Court wherein reinstatement had been directed. Such view, as has been noticed hereinabove, has been re-iterated thereafter by the Hon'ble Supreme Court in **R.M.Yellatti v. The Assistant Executive Engineer, 2005(4) SCT 695.**

10. In the light of such view and dictum laid down by the Apex Court, it is clear that the workmen/petitioners herein had not discharged the initial onus that lay squarely upon them towards proving continuous service of 240 days in the preceding year taken from the date of termination. Under such circumstances, the protection of Section 25-F of the Act was not even available to them. Be that as it may, the Labour Court has been rather benevolent towards awarding ₹20,000/- compensation to each one of them without returning a categorical finding as regards 240 days service in the preceding calendar year from the date of alleged termination.

11. Under such circumstances, the prayer raised in these

petitions claiming reinstatement with continuity in service is without merit.

12. Writ petitions are dismissed.

JANUARY 07, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to the Reporter? (Yes/No)