

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

1. Civil Writ Petition No. 7018 of 2015
DATE OF DECISION : May 29, 2015

Divisional Forest Officer, Territorial, Kaithal & anr. ..PETITIONERS

VERSUS

Lilo and another RESPONDENTS

2. Civil Writ Petition No. 6992 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr. ..PETITIONERS

VERSUS

Sudershan and another RESPONDENTS

3. Civil Writ Petition No. 6993 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Sanju and another RESPONDENTS

4. Civil Writ Petition No. 6994 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Siya Nand @ Anand and another RESPONDENTS

5. Civil Writ Petition No. 6995 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Bharat Singh and another RESPONDENTS

6. Civil Writ Petition No. 6996 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Ram Kumar and another RESPONDENTS

7. Civil Writ Petition No. 6997 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Ganga Devi and another RESPONDENTS

8. Civil Writ Petition No. 6998 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Gurmeet and another RESPONDENTS

9. Civil Writ Petition No. 6999 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Bimla and another RESPONDENTS

10. Civil Writ Petition No. 7000 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Bant Ram @ Balwant and another RESPONDENTS

11. Civil Writ Petition No. 7001 of 2015

Divisional Forest Officer, Territorial, KaithalPETITIONER

VERSUS

Isham Devi and another RESPONDENTS

12. Civil Writ Petition No. 7002 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Santro Devi and another RESPONDENTS

13. Civil Writ Petition No. 7003 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Sneh Lata @ Santosh and another RESPONDENTS

14. Civil Writ Petition No. 7004 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Pritam and another RESPONDENTS

15. Civil Writ Petition No. 7005 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Miya Singh and another RESPONDENTS

16. Civil Writ Petition No. 7006 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Amar Singh and another RESPONDENTS

17. Civil Writ Petition No. 7007 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Pammi @ Pawan and another RESPONDENTS

18. Civil Writ Petition No. 7008 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Jitta Ram and another RESPONDENTS

19. Civil Writ Petition No. 7009 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Jai Bhagwan and another RESPONDENTS

20. Civil Writ Petition No. 7010 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Pawan and another RESPONDENTS

21. Civil Writ Petition No. 7011 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Gulab Singh and another RESPONDENTS

22. Civil Writ Petition No. 7012 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Pinder and another RESPONDENTS

23. Civil Writ Petition No. 7013 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Sunita and another RESPONDENTS

24. Civil Writ Petition No. 7014 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Lalli and another RESPONDENTS

25. Civil Writ Petition No. 7015 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Jai Kishan and another RESPONDENTS

26. Civil Writ Petition No. 7016 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Gian Devi and another RESPONDENTS

27. Civil Writ Petition No. 7017 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Gulab and another RESPONDENTS

28. Civil Writ Petition No. 7019 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Dharam Raj and another RESPONDENTS

29. Civil Writ Petition No. 7020 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Shamsher Singh and another RESPONDENTS

30. Civil Writ Petition No. 7021 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Vijay Pal and another RESPONDENTS

31. Civil Writ Petition No. 7022 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Pala Ram and another RESPONDENTS

32. Civil Writ Petition No. 7023 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Salindro and another RESPONDENTS

33. Civil Writ Petition No. 7024 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Rajinder and another RESPONDENTS

34. Civil Writ Petition No. 7025 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Kuldeep and another RESPONDENTS

35. Civil Writ Petition No. 9870 of 2015

Divisional Forest Officer, Territorial, Kaithal & anr.PETITIONERS

VERSUS

Swaran and another RESPONDENTS

36. Civil Writ Petition No. 10067 of 2015

Divisional Forest Officer, Territorial, KaithalPETITIONER

VERSUS

Vinod and another RESPONDENTS

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. D.S. Nalwa, Additional Advocate General,
Haryana, for the petitioners.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J.

All these petitions are preferred against an award of an even date, i.e. 27.08.2014, except CWP-7018-2015 (award dated 30.09.2014), rendered by the Labour Court, Ambala, vide which workmen were ordered to be reinstated with continuity of service and 50% back-wages. The issue involved being common and facts being similar, these are being disposed of vide a common judgment. Facts are being culled out from CWP-7018-2015. Parties to the lis, hereinafter, would be referred to by their original positions before the Labour Court.

An industrial dispute was raised by the workman, as a consequence of termination of her services by the Management. The case set out in the claim statement was that she joined service on 01.01.1988 in Kaithal Drain Nursery under the then Divisional Forest Officer, Kurukshetra. However, post

creation of Divisional Forest Office, Kaithal, in the year 1997, she served under the Divisional Forest Officer, Kaithal, as a labourer on daily wages, for preparing nurseries, making ridges for plantation, doing earth work, filling polythene bags for sowing seeds, etc. Consequently, she served the Management uninterruptedly from 1988 till 14.12.2012, when her services were abruptly brought to an end. No notice or opportunity of hearing was afforded to her before termination of her services. Likewise, provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'), which are mandatory in nature, were also not complied with. Further, workman fulfilled the conditions as regards regularisation of her services, in terms of the Government policy 2003, but her claim was never considered. On the contrary, services of those who either joined with the workman or subsequently, and were junior to her, were regularised. Thus, her termination was also in violation of the provisions of Section 25-G of the Act. Accordingly, she prayed for reinstatement with continuity of service and full back-wages.

In short, the stand set out in the written statement filed on behalf of Divisional Forest Officer, Kaithal, was that the workman never worked as a labourer in the department. Meaning thereby, the very relationship of employer and employee between the parties, was denied. Further, Government of Haryana had introduced a contract system to carry out different forestry operations instead of Muster Roll system, since the year 2003 onwards.

In a separate written statement filed by Divisional

Forest Officer, Kurukshetra, it was maintained that the labourers were engaged by the lowest functionaries i.e. Forest Guards, on day-to-day basis. Saraswati Range was a part of Kurukshetra Forest Division up to 1997 and a new Division i.e. Kaithal Forest Division, was created in the year 1997 and since then, Saraswati Range forms part of newly created Division. Resultantly staff, along with all the liabilities, was transferred to the newly created Division.

Labour Court, on a consideration of the matter in issue and the evidence on record, observed that to prove her claim, workman stepped into the witness box as WW-1, tendered her affidavit as WW-1/A and documents, Exhibits W-1 to W-26, which corroborated her claim. Exhibit W-1 revealed that the Management had recommended the names of 56 workers, including Mahinder, Dara, Ram Chander, Brij Lal, Prem, Piare Lal, etc. to the higher authorities and solicited approval to regularise their services. And the document itself revealed that all those workmen were far more junior to the workman, as per their dates of joining. Exhibit W-6 showed that sanction to regularise their services was, indeed, accorded on 11.02.2003. Letters, regularising the services of some of the juniors of the workman were referred to as Exhibit W-11 and Exhibit W-14 to Exhibit W-18. Further, Exhibit W-2 was the seniority list of 299 workers drawn on 20.08.2007, which was duly signed by Upvan Sarasak, Kaithal and the name of the workman was duly reflected therein. Likewise, Exhibit W-3 was another letter bearing No.1564-1566 of an even date, addressed to Van Rajik

Adhikari, Forest Division, Kaithal and the same also reflects the seniority position of all the 299 workers of Kaithal Forest Division, including the workman. A block wise list of the workmen dated 24.06.2008 (Exhibit W-4) also showed that the workman was posted at Siwan Block. Further, Exhibit W-5 was comprised of eight pages and contained the Muster Rolls of the workman (Lilo Devi) with effect from 1991 to 2011. And this record was maintained in the form of a computerized list. Accordingly, it was observed that the Management had a similar record qua each workman but the same was intentionally concealed. Still further, workman requisitioned the necessary record, which could show the actual date when all those workers; such as, Satbir Singh, Kalam Singh, Brij Lal, Ved Prakash, Dara Singh, Phula Singh, etc., who were purported to be junior to the workman, joined the Management. In response, Management tendered a letter, Exhibit W-19, and maintained that the dates as to when those workers joined, were not available with the Management. However, on filing of two contempt petitions, the Management sent its employee-Prem Singh, who appeared as WW-4 and produced the requisitioned records. Statement of Prem Singh was tendered in evidence as Exhibit W-27. In his deposition, he admitted that services of the said workers, were regularised by the Management and their respective dates of joining the department were, thus :-

<i>Serial No.</i>	<i>Name of the worker</i>	<i>Date of joining</i>
1	Mahinder	January, 1998
2	Dara	January, 1998

<i>Serial No.</i>	<i>Name of the worker</i>	<i>Date of joining</i>
3	Piare Lal	January, 2001
4	Brij Lal	October, 2000
5	Khajan Singh	August, 1990
6	Sardara Ram	January, 2000

All these workers were junior to the workman and were still in service. Exhibit W-20, i.e. letter dated 21.03.2014, revealed that the Management had instructed the concerned officers to strictly observe the seniority lists dated 20.08.2007, i.e. Exhibit W-2 and Exhibit W-3, and the process to issue Identity Cards on the basis thereof be completed at the earliest. And wages be paid by 10th of every month. Still further, documents Exhibits W-21 and W-22 are the Muster Rolls obtained by the workman under the Right to Information Act, 2005, and that showed that the workman had, indeed, served the Management. The only witness examined by the Management i.e. Anil Sheoran (MW-1), admitted the veracity of the documents Exhibits W-1 to W-24, in his cross-examination. He failed to disclose the name of the Contractor, who purportedly supplied contract labour to the Management. He conceded that those, who were junior to the workman, such as, Khajan Singh, Indu, Dara Singh, Kalam, Brij Lal and Phulla Ram, etc. were earlier employed on daily wages and post regularisation, were working throughout the year. Accordingly, it was concluded that the workman had, indeed, served the Management with effect from 01.01.1988 to 14.12.2012. Consequently, the stand of the Management was falsified that

workman was never in their employment. It was observed that the Management concealed the necessary record, despite being in possession and custody thereof, only with a view to defeat the rights of the workmen, as had those records been produced, it would have shown the continuous/ uninterrupted service rendered by the workmen. Thus, services of the workman were terminated without complying with the provisions of Sections 25-F and 25-G of the Act. So much so, persons junior to the workman were not only retained in service but their services were also regularised. That being so, the termination was held to be illegal and the workman was ordered to be reinstated with continuity of service and 50% back-wages.

That is how the Management is before this Court.

Learned Additional Advocate General, Haryana, submits, (i) workman claimed to have served the Management uninterruptedly from 01.01.1988 to 14.12.2012 and the Labour Court has held so in reference to the two seniority lists dated 20.08.2007, i.e. Exhibits DW-2 and DW-3, whereas the said two documents only reflect the position as was prevailing on 20.08.2007. Nothing was brought on record by the workman to prove that she actually served for a period of 240 days in 12 calendar months immediately preceding the date of her termination i.e. 14.12.2012. That being so, Labour Court erred to hold that termination of the services of the workman was in breach of the provisions of Section 25-F of the Act. (ii) He submits that the onus to prove that the workman had, indeed, served the Management continuously for a period of 240 days in

12 calendar months from the date of her termination, was upon the workman, which she apparently failed to discharge. He submits that to prove her claim, the workman ought to have requisitioned the necessary record, which she never did. (iii) In reference to the observation recorded by the Labour Court in paragraph-13 of the award (at page 48 of the paper book), he submits that the Labour Court itself observed that the persons junior to the workman were not retained in service, post her termination, and once that was so, how could the Labour Court still hold that termination of services of the workman was in breach of the provisions of Section 25-G of the Act. (iv) Lastly, he submits that the Labour Court ought not to have awarded even 50% back-wages to the workman.

On a due and thoughtful consideration of the matter in issue, and an analysis of the record, I am of the considered view that these petitions are wholly devoid of merit and are, thus, liable to be dismissed, for the reasons as are being demonstrated hereinafter.

The specific case set out by the workman in her claim statement was that she joined the Management on 01.01.1988 and rendered uninterrupted service till 14.12.2012, when her services were abruptly brought to an end. In defence, the Management outrightly denied the very relationship of an employer and the employee between the parties. The specific stand set out in the written statement was that the workman never worked with the Management. Thus, the crucial issue to be determined by the Labour Court was as to whether the

workman was ever in employment of the Management ? Labour Court, on an analysis of an enormous evidence and material on record, conclusively concluded that the workman, indeed, served the Management with effect from 01.01.1988 to 14.12.2012. Ex-facie, the stand set out by the Management stood falsified. It would be apposite to point out at this juncture that learned Additional Advocate General, Haryana has not assailed/questioned the finding qua relationship between the parties before this Court, during the course of hearing. Thus, what remains to be determined is whether termination of service of the workman was indeed invalid and unsustainable, and if yes, how ? Concededly, a reference to the document (Exhibit W-2) which is a seniority list of 299 workers drawn by the department, as on 20.08.2007, reveals that the workman was in continuous service of the Management with effect from June, 1988 to August, 2007 i.e. for a period of 19 years. So is the position set out in another document of an even date i.e. Exhibit W-3. Likewise, document dated 24.06.2008 i.e. Exhibit W-4, which contains the list of workmen deployed in different blocks, shows that the workman was posted at Siwan Block and is shown in the list of workers at Serial No.17. Still further, Exhibit W-5 is a document which contains the Muster Rolls of the workman with effect from 1991 to 2011, meaning thereby she was in service even in 2011. I am reminded to point out, at this point in time, that the document, Exhibit W-5, could be brought on record only after the records were requisitioned by the workman by moving an appropriate application. Thus,

Management not only set out a false defence but made every endeavour to conceal and withhold the crucial record. Exhibit W-22 is the Muster Roll of the workman, that shows that she was in service even in the year 2012. Not just that, as indicated in the award, Exhibit W-23 is the report drawn by the Management as regards the working of the workman with effect from 1987 till 2012, which too was obtained by the workman under the Right to Information Act, 2005. That being so, the argument being advanced by the learned counsel that there was nothing on record to show that the workman had, indeed, served the Management beyond 20.08.2007 pales into complete insignificance. Likewise, submission that finding recorded by the Labour Court that the services of the workman were, indeed, terminated on 14.12.2012, was precisely based on the documents dated 20.08.2007 (Exhibits W-2 and W-3) is, equally misconceived. What the Labour Court observed indeed is:

“All the documents discussed above are sufficient to prove the continuing working of the workman under the management since 1988 till his termination.”

Ex-facie, the workman fully discharged the onus that lay upon her.

There is no quarrel with the proposition of law that the initial onus to prove that the workman had, indeed, served for a period of 240 days in 12 calendar months immediately preceding the date of termination, is upon the workman. In the matter in hand, Management denied the very relationship between the parties. The workman discharged the initial burden

and proved that she was in service since 01.01.1988 to 2012 and falsified the stand set out by the Management. And if despite that the Management was to maintain that workman, by mathematical precision, had not completed 240 days in preceding 12 calendar months, the Management was under obligation in law to have produced the requisite records for consideration of the Court. It's but obvious. How could the Management do so since producing the necessary records would have been completely destructive of their defence that workman was never in it's employment. Thus, an adverse inference has to be drawn against the Management. That being so, the irrefutable presumption that permeates the record is that the workman rendered uninterrupted service till her termination. And, thus, provisions of Section 25-F of the Act ought to have been complied with. Even if it is assumed that the provisions of Sections 25-F of the Act were/are not attracted, still it does not advance the case of the Management a bit as even otherwise termination of service of the workman is wholly unsustainable for multiple reasons. Concededly, persons junior to the petitioner; namely, Mohinder, Dara, Ram Chander, Brij Lal, Prem and Piare Lal, who joined the department almost a decade later than the workman, were not only retained in service but were even regularised. Thus, termination of service of the workman was in apparent breach of Section 25-G of the Act. The argument that Labour Court itself observed that no junior was retained in service and, thus, there was no breach of the provisions of Section 25-G of the Act, is wholly misplaced. As

record shows that the persons junior to the workman were not only retained in service but even regularised. Further, the observation made by the Labour Court clearly suggests that what, indeed, the Court observed was that **“and junior persons were not retained in service after his termination but they have been regularized”**. Apparently, the expression 'only' after the expression **“not”** appears to have been omitted purely on account of an accidental slip. I am reminded to point out again that the workman joined the Management in the year 1988 and her services were abruptly brought to an end on 14.12.2012 without any notice, opportunity of hearing, or holding of any domestic inquiry. No reason, least plausible, was assigned in support of her termination. In the matter in hand, the Management i.e. Haryana Forest Department, set out a false defence which was wholly unconscionable. The department disowned the workmen, who had rendered uninterrupted service for decades. Records were withheld and crucial information was concealed. All with a purpose and design to thwart the rights of the workman that were acquired through a life time labour. It's time to mention that one of the prime objective of the Haryana State Litigation Policy, 2010 is **“to transform Government into an Efficient and Responsible Litigant so that it (a) manages and conducts litigation in a collusive, coordinated and time bound manner (b) Ensures that good cases are won and bad cases not pursued needlessly (c) Reduces overall Govt. litigation load in Courts thereby providing relief to the judiciary”**. Whereas, approach of the Management was wholly destructive of

industrialism, industrial peace and harmony. It's a classic case of brazen victimization and unfair labour practice and, thus, the termination of service of the workman was/is liable to be set aside on that score alone.

The workman maintained in her statement of claim that she remained unemployed ever since the date of her illegal termination and even deposed so. In cross examination, she was not even suggested that she remained gainfully employed. Nothing was brought on record to prove her gainful employment either. Therefore, discretion exercised by the Labour Court to award 50% back-wages does not warrant interference.

In the wake of the position as sketched out above, there hardly exists, least plausible, any ground to interfere with the awards rendered by the Labour Court. Petitions are devoid of both i.e. merits and bona fides. And are, thus, dismissed.

MAY 29, 2015
Kang

(ARUN PALLI)
JUDGE