

In the High Court of Punjab and Haryana, at Chandigarh

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LPA No. 1965 of 2014 (O&M)

Date of decision: October 6, 2015

District Manager, Confed, Kaithal

..Appellant

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala

and another

..Respondents

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. Amit Jaiswal, Advocate
for the appellant.
Mr. Rajiv Dhawan, Advocate
for respondent No. 2

- 1.Whether to be referred to reporter? Yes/No
- 2.Whether the judgment should be reported in the digest ? Yes/No
3. Whether reporters of local papers may be allowed to see the judgment? Yes/No

Mahavir S.Chauhan, J.

Balbir Sharma, respondent No.2, joined service with the appellant, as a Chowkidar in the month of April, 1995. After having worked with the appellant for more than 10 years, his services were terminated with effect from 31.1.2006 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947(for

short, "the Act"). Pursuant to failure of conciliation proceedings, the appropriate Government made following reference to learned Labour Court, Ambala:-

1) Whether termination of services of Shri Balbir Sharma is justified or not? If not so, what relief he is entitled?"

In the reply filed on behalf of the appellant, it was stated that the respondent-workman never worked with the appellant and that being so, there was no question of termination of his services or compliance of the provisions of the Act.

After both the sides adduced evidence in support of their respective stands, learned Labour Court vide award dated 31.3.2014, answered the reference by holding that services of the respondent-workman were terminated illegally and he is entitled to be reinstated with continuity of service and 50% back wages.

Appellant challenged award dated 31.3.2014 by way of Civil Writ Petition No.18581 of 2014 which has been dismissed, *in limine*, with costs amounting to ₹10,000/- vide order dated 9.9.2014 by the learned Single Judge.

To lay challenge to order dated 9.9.2014, appellant has brought the instant intra court appeal under Clause X of the Letters Patent.

We have heard learned counsel for the parties.

Learned counsel for the appellant has argued that the appellant-management does not dispute the correctness of the findings recorded by the learned Labour Court as affirmed by the learned Single Judge but reinstatement of the respondent-workman

with 50% back wages is not warranted in the facts and circumstances of the case and instead the respondent-workman ought to have been compensated by awarding adequate compensation.

Learned counsel appearing for the respondent-workman however, defends the impugned order of the learned Single Judge and award of the learned Labour Court.

Learned Single Judge dismissed the writ petition of the appellant-management by observing as under:-

“Thus, it is apparent that it was not denied regarding the fact that in reply to the demand notice, the relationship of employer and employee had been admitted by the department itself. The department did not produce the record as it found it difficult in tracing out the same. Though, a contrary reply had been filed wherein a complete denial of the relationship of employer and employee *inter se* the parties, had been taken. It was, in such circumstances, the Labour Court has held that an adverse inference has to be drawn against the petitioner Management by placing reliance upon the judgment of the Apex Court in ***Director Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda, 2010 (2) Recent Services Judgments (Supreme Court) 184***. The submission of the counsel that adverse inference was wrongly drawn against the Management, thus, was rightly rejected. Once a specific stand has been taken that there was no relationship of employer and employee *inter se* the parties, then it was for the department to produce the record to show to the contrary that who were the employees working in the said godown regarding the period from April,

1995 to January, 2006. The workman had categorically stated in his evidence that the record was with the Management, which had been manipulated by the Management itself. It is a settled principle of law, which has rightly been noticed by the Labour Court that adverse inference is necessarily to be drawn against the Management in such circumstances, specifically in the case of daily wager where the record was always with the Management and which has failed to produce the same. Reference can safely be placed upon the judgment rendered by the Apex Court in ***R.M.Yellati v. The Assistant Executive Engineer 2006(1) Supreme Court Cases 106***, wherein it has been held as under:-

“15. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear

that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.”

Rather the workman had been victimized and the action of the petitioner-Government organization cannot, in any way, be approved and can only be depreciated regarding the unfair labour practices and the stand taken against the record.

In such circumstances, reinstatement with continuity of service and back wages to the tune of 50% is very much justified keeping in view the the long service of almost of 11 years rendered by the workman. Reference can safely be placed upon the judgment rendered by the Apex Court in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others (2013) 10 Supreme Court Cases 324***, wherein it has been held that in case of victimization, the workman should be granted 100% back wages. But since the workman has not challenged the said award before this Court, therefore, this Court is not commenting upon that issue.”

It comes out from the record that the respondent-

workman worked with the appellant-management from April, 1995 to 31.1.2006, i.e., for more than 10 years and the appellant-management adverted to a false stand in the written statement saying that the respondent-workman never worked with the appellant-management. Not only this, as noticed by the learned Labour Court, the appellant-management did not produce before the learned Labour Court the muster roll and the attendance register pertaining to the respondent-workman and thereby withheld material evidence from the Labour Court in an attempt to prejudice case of the respondent-workman to effectively assail wrongful termination of his services. In such a situation, the learned Labour Court has rightly raised a presumption adverse to the plea of the appellant-management. Non production of the aforestated records by the appellant-management, coupled with the categorical statement of the respondent-workman in his deposition before the learned Labour Court that the record had been manipulated by the appellant-management assumes significance and tells adversely on the conduct of the appellant-management, an instrumentality of the State expected to act as a model employer.

In view of these circumstances, coupled with the fact that the services of the respondent-workman were terminated after he had put in more than 10 years service, we do not find any reason to interfere with the well reasoned order passed by the learned Single Judge affirming findings of the learned Labour Court holding respondent-workman entitled to reinstatement in service with 50% back wages.

In view of the above, the appeal fails and is dismissed.

No costs.

(SATISH KUMAR MITTAL)

JUDGE

October 6,2015

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(MAHAVIR S.CHAUHAN)

JUDGE