

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

**Letters Patent Appeal No. 720 of 2015
Date of Decision: September 24, 2015**

M/s. Sood Industries

---Appellant

Versus

Presiding Officer Industrial Tribunal-cum-Labour Court and another

---Respondents

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

Present: Shri Amarjit Singh, Advocate, for the appellant.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

This intra court appeal under Clause X of the Letters Patent has been brought by the M/s. Sood Industries (for short, 'the management') to lay a challenge to order dated February 09, 2015 whereby the learned Single Judge has dismissed Civil Writ Petition No. 2022 of 2015 brought by the appellant for issuance of a writ of Certiorari quashing award dated November 27, 2013 whereby learned Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh (for short, 'the Tribunal') has directed reinstatement of respondent No. 2 (here-in-after referred to as, 'the workman') with continuity of service and 25% back wages.

02. Workman's case before the learned Tribunal was that the

management had appointed him as a Lock Fitter in the year 1999 but terminated his services, without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, 'the Act'), on July 17, 2006 only because he had urged a pay raise and grant of certain other benefits. However, as per case set up by the management, the workman having never served with it, there existed no relationship of master and servant and, as such, there was no question of termination of services of the workman. Learned Tribunal, on examination of the pleadings of the parties and evidence adduced by them, came to the conclusion that the workman was an employee of the management and his services were terminated illegally and in violation of the canons of natural justice and provisions of Section 25F of the Act and, therefore, vide award dated November 27, 2013, directed his reinstatement with continuity of service and 25% back wages.

03. Before us it has been argued on behalf of the management that the learned Single Judge has dismissed its writ petition by overlooking the fact that there existed no relationship of master and servant between the management and the workman, therefore, there was no question of termination of services of the workman. It is also contended on behalf of the management that the ESI Returns, Exhibits MW2/1 to MW2/12, clearly show that the workman was not an employee of the management and record of wages and attendance could not be produced because it had been lost and a Daily Diary Report recorded in this regard was produced before the learned Tribunal but the learned Tribunal and the learned Single Judge have refused to rely upon this evidence, on non-existent grounds.

04. No other or further point has been urged.

05. Learned Tribunal and learned Single Judge refused to rely upon the Dairy Diary Report and the ESI Returns saying that these are later in time as compared to the date of termination of workman's services and are unilateral. The learned Single Judge also approved of the adverse inference drawn by the learned Tribunal against the management for its failure to produce the attendance register and wages register.

06. The workman approached the learned Tribunal with a very definite and specific plea that he had worked with the management from the year 1999 to July 17, 2006 uninterruptedly and he was thrown out of job only because he had asked for a pay rise and certain other benefits. He reiterated this plea on oath while appearing as AW1 and to support his plea he requested the learned Tribunal to summon attendance register and wages register as these registers were very material and, admittedly, were to be maintained by the management. Instead of saying that these registers were not maintained by it, the management, after taking a number of adjournments, produced a Daily Diary Report dated July 20, 2006 to show that these documents had been lost. The management also relied upon ESI Returns, Exhibits MW2/1 to MW2/12, to show that in none of these returns the workman was shown to be an employee of the management. Admittedly, all these documents are unilaterally prepared by the management and are later in time than the date of termination of workman's services. Therefore, no implicit reliance can be placed on these documents and an adverse inference has rightly been raised by the learned Tribunal against the management because it is bounden duty of every employer to maintain proper and true record of appointment, attendance and wages of its

employees and to make these records available for judicial scrutiny whenever called upon to do so. In view of reluctance of the management to produce the relevant record to rebut workman's specific plea of having worked with the management uninterruptedly from the year 1999 to July 17, 2006 has rightly been used by the learned Tribunal to hold that the workman had been an employee of the management and had completed 240 days' service in every calendar year. Not only this, Basant Kumar (MW3), a witness of the management demolished the plea put up by the management by revealing under the stress of cross-examination that services of the workman were not terminated by the management rather the workman had abandoned his job.

07. Plea of abandonment of his job by the workman, as brought forth by Basant Kumar (MW3) not only proves that the workman has been an employee of the management but also that false plea was adverted to by the management to say that he has never been its employee, but it cannot be used to justify termination of services of the workman because if it is accepted to be correct, the management was obliged to call upon the workman to explain his absence from duty and to hold an enquiry to establish his guilt before showing him the door. However, it is admitted case of the management that no such enquiry was held. It has also remained undisputed that simultaneously with the termination of services of the workman or immediately thereafter no compensation, as contemplated by Section 25F of the Act, was offered to him. Termination of workman's services, therefore, cannot be said to be valid and legal.

08. As regards payment of back wages, it has come in the cross-

examination of the workman as AW1 that he has been earning livelihood for himself and his family comprising of a wife and one child by working as a daily wager. Therefore, award of 25% back wages to the workman cannot be termed as unreasonable or excessive.

09. In view of the above, we do not find any illegality in the order of the learned Single Judge and, as a consequence, the appeal fails and is hereby dismissed.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

September 24, 2015
adhikari