

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

LPA No.730 of 2015

Date of Decision : 10.07.2015

Tejbir

.....Appellant

Vs.

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak
and others

.....Respondent

CORAM : HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present:- Mr.Sandeep Singal, Advocate for the appellant.

S.S.SARON, J.

The present appeal has been filed by the appellant-Tejbir against the judgment and order dated 30.03.2015 passed by the learned Single Judge in CWP No.22748 of 2014 whereby his petition against the award dated 25.08.2014 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak (Labour Court – for short) has been dismissed.

The case of the appellant is that he was initially appointed as dairyman on 18.11.2005 on daily wages basis by the Milk Plant, Gohana Road, Rohtak (respondent No.2) ('Management' – for short). According to him his services were illegally terminated by a verbal order on 16.10.2006 without any cause or assigning any reason. His service record had remained spotless. He was appointed against a regular post and had completed more than 240 days of continuous service in a calender year. The appellant was

entitled to be heard before terminating his services but he was not heard. Such type of termination, it is submitted, amounts to unfair labour practice. No advance notice was given by the Management/respondent No. 2 to the appellant. Besides, no charge sheet was served on him by the Management/respondent No. 2 and even no inquiry was conducted. Moreover, retrenchment compensation was also not paid. Therefore it was alleged that the Management/respondent No. 2 had contravened the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act'- for short). It is submitted that the mandatory provisions of Chapter 5 -A of the Act were also not complied with. According to him persons junior to him were still working with the Management/respondent No.2 and it had failed to adhere to the principle of, "last come – first go". Therefore, according to the appellant, the Management/respondent No. 2 had violated the provisions of Sections 25-G and 25-H of the Act. The appellant had requested the Management/respondent No. 2 many a times regarding his illegal termination from service but it did not pay any heed to his request. The appellant stated that he was working with the Management/respondent No.2 through M/S Baba Haridas Security Services Rohtak (respondent No. 3) under the ownership of Pardeep Kumar. However, the wages were paid to the appellant by the Management/respondent No. 2 through M/S Baba Hari Das Security Services Rohtak (respondent No. 3) owned by Pardeep Kumar. It was prayed by the appellant that he may be reinstated on his previous post with continuity of services and full back wages as also resultant benefits.

The appellant aggrieved against the illegal termination of his services had served a demand notice dated 24.11.2006 on the Management/respondent No.2. The Management/respondent No. 2 appeared before the Labour cum Conciliation Officer and denied the demands as were raised by the appellant. The conciliation proceedings remained unsuccessful and the matter was referred by the State of Haryana to the learned Labour Court for final adjudication. The reference was to the effect as to whether the termination of services of the workman Sh. Tejbir Singh were justified and, if not, to what relief was he entitled to.

The appellant appeared before the learned Labour Court and filed his statement of claim dated 15.10.2007. The demands as raised in the demand notice were reiterated.

The Management/respondent No.2 i.e. Milk Plant, Rohtak denied the claim of the appellant stating that in fact, he was a contractual labourer and was working with M/s Baba Haridass Security Services, Rohtak (respondent No.3) which was an agency for supplying man power to the Milk Plant. It was owned by Contractor-Pardeep Kumar. There was no relationship of employer and employee between the appellant and Milk Plant, Rohtak (respondent No.2). Payment of any wages by the Management/respondent No.2 to the 'workman' was also denied.

M/s Baba Haridass Security Services, Rohtak (respondent No.3) was proceeded against ex-parte before the learned Labour Court.

The learned Labour Court, Rohtak, in its award dated 25.08.2014 (Annexure P-9), held that the onus to prove that the

workman was working as dairyman with Management/respondent No.2 and he had completed 240 days of service in 12 months preceding the date of his termination on 16.10.2006 was on him. The appellant had, however, not summoned any record from the office of Management/respondent No.2 to show that he was working as dairyman w.e.f 18.11.2005 and that he had completed 240 days of continuous service in 12 calendar months preceding his termination. The workman (appellant) in his testimony as WW-1 stated that he had no record to substantiate that he was receiving salary from Management/respondent No.2. This was held to be in consonance with the averment in his demand notice that he was receiving salary from Pardeep Kumar, the owner of M/S Baba Haridass Security Services, Rohtak (respondent No.3). The deposition of the workman and his pleadings in the demand notice it was held justified the stand of Management/respondent No.2 that he was a contractual labour of M/S Baba Haridass Security Services, Rohtak (respondent No.3), a man power supply contractor of Management/respondent No.2. It was held that the workman (appellant) had failed to prove that he had completed 240 days of his service with the Management/respondent No.2 in 12 calendar months preceding his termination. Besides, there was nothing to show that M/S Baba Haridass Security Services, Rohtak was an unlicensed contractor and this was not so stated by the workman (appellant) in his testimony. The workman (appellant), in the circumstances it was held, had failed to discharge the onus on him. Consequently, it was concluded that the workman (appellant) had failed to prove that his services were illegally

terminated by the Management/respondent No.2 or M/S Baba Haridass Security Services, Rohtak (respondent No.3).

It is to be noticed that the workman (appellant) in his deposition before the learned Labour Court stated that he was having no record for substantiating that he was receiving the salary from the Management/respondent No.2. The said testimony of the workman was held to be totally in consonance with his demand notice that he was receiving salary from Pradeep Kumar the owner of M/s Baba Haridass Security Services, Rohtak (respondent No.3). Besides, he had also failed to prove that he in any case had completed 240 days of services preceding 12 calendar months from the date of his termination from service.

During hearing of the case before the learned Labour Court, the appellant had examined himself as WW-1. He submitted documents Mark A and Mark B as photocopies of the attendance register which are attached as Annexure P-4 (collectively). An application dated 17.11.2011 (Annexure P-5) was filed by the appellant for summoning the concerned Clerk from the office of the Chief Executive, Milk Plant, Rohtak (respondent No.2) along with the quarter rolls, pay rolls and attendance register in respect of the appellant who worked as dairyman from 18.11.2005 to 16.10.2006 on daily wages basis. It was also prayed that the first muster roll or the first date of appointment in respect of Kuldeep son of Ram Niwas, Dharambir son of Mange Ram, Ashok son of Sudesh Pal, Monu son of Rai Singh, Kuldeep son of Om Parkash and Joginder son of Om Parkash who were still working on the same post may be summoned.

Sh. R.P.Chauhan, Assistant Manager, Milk Plant, Rohtak appeared as WW-2 for the appellant and he in his statement (Annexure P-6) submitted that the summoned record was not with them nor had he brought it so as to produce it because the appellant was not their employee. He had seen Mark-A and Mark-B (Annexure P-4/collectively). These copies of the attendance register, it was stated, were not copies of their milk plant. It is stated as wrong that being an employee of the milk plant, he was giving false statement. The same witness i.e. Sh. R.P. Chauhan also appeared as a management witness as MW-1. In his statement (Annexure P-7) during cross-examination, he was again confronted with the documents Mark-A and Mark-B (Annexure P-4/collectively). These copies, it was stated, were not attendance register of their milk plant. He also stated as wrong that in Mark-A and Mark-B the other persons mentioned along with the applicant (appellant) were not working with them.

Learned counsel for the appellant submits that in fact there are other persons mentioned in Mark-A and Mark-B who were working with the Milk Plant (respondent No.2). It is contended that Sh.R.P. Chauhan (MW-1) in his cross examination states as wrong that in Mark-A and Mark-B, the other persons mentioned along with the applicant (appellant) were not working with them. Therefore, according to learned counsel, this would mean that in fact the other person as mentioned in Mark-A and Mark-B were working with the Milk Plant.

After giving our thoughtful consideration to the matter, we are of the view that this has been only a clerical error in recording

the statement and in fact the witness states that it is also wrong that in Mark A and Mark B, the other persons mentioned in the application were working with him. This is also evident from the statement (Annexure P-6) of Sh. R.P. Chauhan while appearing for the appellant as WW-2 wherein he states after seeing Mark-A and Mark-B that the copies of the attendance register were not of their Milk Plant. Besides, Sh. R.P. Chauhan while appearing as Management Witness as MW-1 in his cross-examination states as wrong that they had given salary to the applicant (appellant) directly and had given it to M/S Baba Haridass Security Services. We have also gone through the documents Mark-A and Mark-B attached as Annexure P-4 collectively and a perusal of the same show that these though mentioned Milk Plant, Rohtak and attendance register of the prod. for the month of March 2006 and for the month of June 2006 respectively. The name of appellant Tejbir Singh is mentioned as also some others. However, there is no authentication or verification of the same in any manner. The said documents have not been proved on record or tendered in evidence by exhibiting the same. Therefore, no reliance can be placed on such documents.

In the circumstances, the learned Single Judge has rightly held that the appellant-workman had failed to produce any document to show that he was receiving salary from the Management-Milk Plant/respondent No.2. Besides, the stand of the Management/respondent No.2 that he was a contractual labourer of M/s Baba Haridass Security Services was fully in consonance with the case of the appellant himself as set out in the claim

statement that he was being paid a salary by the said Security Services. It was also observed that the workman (appellant) had nowhere in his testimony stated that the said Security Services was of an unlicensed contractor and neither was any suggestion put to that effect given to the Management witness-R.P.Chauhan, MW-1.

Therefore, we have found no infirmity with the impugned order dated 30.03.2015 passed by the learned Single Judge or the award dated 25.08.2014 (Annexure P-9) passed by the learned Labour Court, Rohtak.

For the foregoing reasons, there is no merit in the present appeal and the same is, accordingly, dismissed.

(S.S.SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

10.07.2015
anil/amit

Note: Whether to be referred to the Reporter: Yes/No.