

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.893 of 2015

Date of Decision: 31.07.2015

Smt. Rama Pandey

..... Appellant

Versus

M/s Neel Kamal Enterprises Pvt. Ltd. and Anr.

..... Respondents

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

Present: Mr. Ravinder Malik, Advocate
for the appellant.

S.S. SARON, J.

This appeal has been filed by the appellant Rama Pandey against the order dated 27.04.2015 passed by the learned Single Judge in CWP No.7911 of 2015.

The appellant was initially appointed by M/s New Kamal as a helper on 11.03.1994. No appointment letter, wage slip or attendance card were issued to her. Later the name of the company was changed to M/s Neel Kamal Enterprises Pvt. Ltd. She was given ESI card on 01.07.1996 in the name of respondent No.1-M/s Neel Kamal Enterprises Pvt. Ltd. though no transfer letter was given to her in the new company nor were her dues settled by M/s New Kamal, which had changed its name as Neel Kamal in the year 1996. This name was later changed to Sidharth Engineering Works. The services of the appellant were terminated on 18.09.2000. She raised an industrial dispute which was referred to Labour Court-cum-Industrial Tribunal,

Faridabad ('Tribunal' for short).

The respondent No.1-Management in its written statement took a stand that the appellant was appointed on 01.07.1996. An appointment letter was issued to her on the same day. Her services were retrenched due to lack of orders and due to slump in the market. Copy of the notice was sent to the Labour Department and the same was also pasted on the factory gate. The appellant-workman, however, refused to take her full and final dues which the respondent No.1-Management was willing to pay.

The learned Labour Court vide its award dated 14.10.2009 accepted the claim of the appellant-workman and answered the reference in her favour holding that she was entitled to be reinstated in service with 20 % of the back wages, besides, costs, which were assessed at ₹ 2,000/-. It has further been held that if the respondent No.1-Management did not make payment of back wages within a period of three months from the date of publication of award, then it shall be liable to pay interest @ 6% per annum.

The appellant aggrieved against the order dated 14.10.2009 vide which full back wages had not been given to her filed CWP No.7911 of 2015 in this Court. The learned Single Judge of this Court on consideration of entire matter held that the appellant-workman had not made even a single averment anywhere qua the fact that she was not gainfully employed. In the absence of pleadings, it was held that as per the law laid

down by Hon'ble the Supreme Court in '*Deepali Gundu Surwase V/s Kranti Junior Adhyapak Mahavidyala (D.Ed) and others*' (2013) 10 SCC 324, the appellant was not entitled to back wages. It was held that in the absence of the averment, the appellant was not entitled to full back wages yet she had been granted the benefit of 20% back wages. No merit was found in the writ petition.

Learned counsel for the appellant has contended that in fact the appellant in para 19 of her affidavit which was tendered in evidence had deposed that she had tried her best to get a job but could not get any, therefore, she had remained unemployed.

After giving our thoughtful consideration to the matter, it is to be noticed that even if the said affidavit has been tendered in evidence, the same in the absence of pleadings cannot be read in evidence. The learned Single Judge of this Court has also held that in the absence of pleadings, the evidence cannot be read.

Therefore, we find no infirmity with the order that has been passed by the learned Single Judge and consequently no merit in the appeal.

Accordingly, the appeal is dismissed.

(S.S. SARON)
JUDGE

31.07.2015

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SHARMA YOGESH
2015.10.06 13:11
I attest to the accuracy and
integrity of this document

(RAMENDRA JAIN)
JUDGE