

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

203

CWP No. 12971 of 2009 (O&M)

Date of decision : 09.08.2016

...

Bharti

.....Petitioner

vs.

The Presiding Officer and another

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Diwan S. Adlakha, Advocate
for the petitioner.

Mr. Deepender Ahlawat, Advocate
for respondent No.2

...

P.B. Bajanthri, J. (Oral)

The petitioner has assailed the award dated 11.11.2008
(Annexure P-1) passed by the Industrial Tribunal-cum-Labour Court,
Circle-I, Faridabad.

2) The petitioner was appointed as Water Pump Operator
on 1.2.1996 and posted in Sub Division, Sector 37, Faridabad. On
1.9.1996, he was posted to Sub Division, Sector 7 Faridabad. While
working at Sector 7 Faridabad, petitioner, on apprehension that his
services would be terminated, he approached the Civil Court and
obtained an injunction not to displace him from service on 18.1.1997.
The civil suit filed by the petitioner was dismissed on 19.1.2005.
Thereafter, the respondents terminated the services of the petitioner
on 25.1.2005. The Labour court framed the following issues:-

“ (i) Whether the services of Bharti, workman were terminated illegally? If so, to what relief he is entitled? OPW

(ii) Whether MCF does not fall under the definition of industry? If so, to what effect? OPR

(iii) Whether the reference is not maintainable? OPR

(iv) Relief.”

3) Issue Nos. 2 and 3 have been held in favour of the petitioner. In so far as issue No. 1 is concerned, it is declined for the reasons that petitioner has not made out a case that he has worked for 240 days. On the material made available to the Labour Court to the extent of only 213 days for the period from 1.2.1996 to 30.8.1996. Thus the Labour Court has declined the petitioner's claim. Feeling aggrieved by the award dated 11.11.2008, the present petition has been filed.

4) Learned counsel for the petitioner submitted that the Labour Court has erred in not counting the period from 1.9.1996 to 30.3.1997. The respondents have not furnished any material to show that petitioner has not worked during the period from 1.9.1996 to March 1997, which has come on record. Muster rolls have not been produced for the aforesaid period. Therefore, the Labour Court erred in not noticing the above error. If the period from 1.9.1996 to 30.3.1997 is taken into consideration, petitioner satisfies the condition of 240 days continuous working.

5) Learned counsel for the respondents submitted that it is evident on record that petitioner has worked only for 213 days and there is break in service. Therefore, there is no continuity in service to say that he has worked for 240 days. Therefore, there is no error committed by the Labour Court in giving the finding.

6) Perusal of the records, it is evident that muster rolls for the period from 1.9.1996 till March 1997 has not been made available by the respondents. That apart, the petitioner rightly or wrongly, has worked from 18.1.1997 to 25.1.2005 by virtue of injunction in the civil suit. Thus over all petitioner worked for about 9 years. Having regard to the above facts and circumstances, the award of the Labour Court dated 11.11.2008 (Annexure P-1), is set aside. The petitioner is entitled for reinstatement, continuity of service and with 50% back wages.

7) The petition stands disposed of.

(P.B. Bajanthri)
Judge

09.08.2016
chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No