

CWP No. 20861 of 2012 (O&M)

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 20861 of 2012 (O&M)
Date of Decision : 12.05.2016

The Executive Engineer

...Petitioner

Versus

Sh. Kailash and another

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. Raj Kumar Makkad, Deputy Advocate General,
Haryana.

Ms. Abha Rathore, Advocate for respondent No. 1.

P.B. Bajanthri, J.(Oral)

In the instant writ petition, the petitioner-department has questioned the validity of the award dated 30.03.2012 (Annexure P-5) passed by respondent No. 2.

Brief facts of the case are that the respondent-workman was appointed as Mali-cum-Watchman on daily wages basis on 01.12.1993. He was allowed to work depending upon the availability of work in the department. He was allowed to work till 13.11.1997. It is learnt that respondent-workman was orally terminated from service. The respondent-workman raised a demand notice on 14.02.2002.

Thereafter Labour Court passed the award against the workman. Aggrieved by the award passed by the Labour Court, the respondent-workman preferred CWP No. 6680 of 2010. The same was disposed of while remanding the matter to the Labour Court. In the remanded matter, the Labour Court passed an award dated 30.03.2012 in favour of the workman to the effect that he is entitled to reinstatement with continuity of service and 25% back wages from the date of demand notice. The appellant aggrieved by the order of the Labour Court, presented this writ petition.

Learned State counsel for the petitioner vehemently contended that the respondent-workman did not work for 240 days. He has worked only for 192 days. Therefore, Labour Court erred in drawing adverse inference that the petitioner did not produce the records. When the records itself indicates that the respondent-workman had worked only for 192 days during the period from December, 1996 to 13.11.1997. Even if whole of the November month is taken into consideration, the respondent-workman would have worked for 205 days and not 240 days. On this score, the award of the Labour Court is liable to be set-aside.

It was further contended by learned State counsel that the respondent-workman was terminated on 13.11.1997 and demand notice was issued only on 14.02.2002. There is a delay of more than 4 years. Even on this ground, claim of the workman is to be rejected. Insofar as drawing adverse

inference that an employee, who has not completed 240 days and for non-production of documents, the Labour Court cannot draw adverse inference against the employer. In support of this contentions, he has cited a decision of the Apex Court in ***Krishna Bhagya Jala Nigam Ltd. Vs. Mohammed Rafi***, 2006(9) SCC 697, wherein, the Hon'ble Supreme Court has held 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. In the present case, it is evidence on record that the workman is not worked for 240 days, therefore, the Labour Court award is to be set-aside.

Per-contra, learned counsel for the respondent-workman submitted that petitioner was required to produce muster roll during the period from December 1996 to November 1997, muster roll has been placed before the Labour Court. The petitioner-department has failed to produce muster roll for the month of July, August and October 1997, so adverse inference has been drawn for non-production of material. Therefore, there is no infirmity in the order of Labour Court in drawing adverse inference against the petitioner.

Learned counsel for the respondent-workman pointed out from the award of the Labour Court in particularly paras 13, 14 and 15. Perused para 14 and 15, wherein it has been recorded that “no summoned witnesses of the workman, who is an employee of the respondent(petitioner herein) has

specifically stated that she had brought the relevant record for the months of December 1996 to October 1997. However, she did not bring the record for the month of November 1997. She has admitted that she was directed to bring record for the period from 01.12.1996 to 13.11.1997 but she has brought the record pertaining to the period from 01.12.1996 to 31.10.1997.

No reasons have been explained by her for non-production of the muster roll for the month of November 1997. On the contrary, a cash book for the month of November 1997 was produced, wherein, name of the workman is not reflected. In these circumstances, the Labour Court drawn adverse inference for not producing the summoned record. It was further submitted that the judgment cited by the learned State counsel is relating to the matter proving the number of days worked by means of an affidavit or self serving statements made by the claimant-workman.

In the present case, inference has been drawn in favour of the respondent-workman before the Labour Court for non-producing relevant material for the months of July, August and October 1997. Even though records were summoned for the aforesaid period. The same was not made available by the petitioner-department. Therefore, the cited decision is not applicable to the present case.

Heard learned counsel for the parties.

The petitioner counsel disputed the number of days worked by the workman that the workman had not worked for

240 days and he has only worked for 192 days. Therefore, adverse inference drawn by the Labour Court is incorrect. In such cases, the Supreme Court has held in *Krishna Bhagya Jala Nigam Ltd.'s case (supra)*, that adverse inference cannot be drawn based on the affidavits or self-serving statements to say that workman has worked 240 days. From the perusal of the record and findings of the Labour Court, it is averred that respondent-workman has not worked for 240 days. However, the petitioner-department has failed to produce necessary material for the intervening period i.e. July, August and October 1997, when the Labour Court summoned for production of muster roll for the period from December 1996 to November 1997. The petitioner-department has produced material only from December 1996 to June, September and November 1997. Material for the intervening period like July, August and October 1997 has not been produced and no reasons have been assigned as to why the muster roll maintained by the department for the month of July, August and October 1997 has not been made available to the Labour Court. Therefore, rightly the Labour Court has drawn adverse inference.

For the first time, the petitioner counsel raised question of delay in issuance of demand notice. The workman was terminated on 13.11.1997, whereas demand notice was issued on 14.02.2002. The said issue was not raised before the Labour Court, therefore, it is not proper at this stage to interfere in respect of delay issue is concerned. It is true that

there is a delay in issuing demand notice. Delay would not take away the right of the workman. The Labour Court awarded that the workman is entitled to reinstate with continuity of service and 25% back wages from the date of demand notice. While taking the conduct of the workman that he kept quiet from 13.11.1997 to 2002 in issuing demand notice, the award of the Labour Court is modified to the extent of reinstatement with continuity of service only and it is made clear that the workman is not entitled to any back wages.

Accordingly, the present petition is disposed of in above terms.

May 12, 2016.
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(P.B. BAJANTHRI)
JUDGE