

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

204**CWP No. 5728 of 2011(O&M)****Date of decision: 07.09.2016**

Subhash Chander

.... Petitioner

Versus

Presiding Officer, Labour Court, Panipat and others

.... Respondents

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

Present: Mr. Ashok Paul Jagga, Advocate for the petitioner.

Mr. N.S.Jagdeva, Advocate for the respondents.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has assailed the award passed by the Labour court dated 31.05.2010. The petitioner is stated to have been appointed as a Salesman on 28.10.1998 on daily-wage basis in the Gram Shilp, Khadi Gramodyog Ayog, Mission Chowk, Sonapat. His services were terminated on 28.07.2001. Industrial dispute was raised and referred. Industrial Tribunal-cum-Labour Court, Panipat passed Award on 31.05.2010 vide Annexure P-9. Claim of the petitioner was declined on the score that he did not fulfil the condition that he was not continuously worked for 240 days and also relying on decision of the Apex Court reported in 2002(3) SCC 25 titled as ***Range Forest Officer versus S.T.Hadimani*** noting:-

“that mere filing of affidavit by the workman,

being only his own statement in his favour, cannot

be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year.”

2. Learned counsel for the petitioner submitted that he has worked for more than 240 days. In this regard, he has submitted an application before the Labour Court for supply of documents from the respondent-Management on 21.05.2003. Details are as under:-

1. *Sari Counting Register (Stock) from 1999 to 2001.*
2. *Detail of the amount deposited in the bank on daily basis from 01.09.2000 to July, 2001.*
3. *Cashmemo*
(a) Cotton Khadi, (b) Gram Udyog (c) Silk (From 1999 to 2001)
4. *Sales Register (From 1999 to 2001)*
5. *Payment Vouchers (from 1999 to 2001)*
6. *Cash Book, Ledger Book etc (from 1999 to 2001)”*

3. Despite request for production of documents cited above, the Management failed to produce before the Labour Court. Perusal of Annexure P-6 examination of WW-1 Subhash Chand, it is evident that petitioner was working. The management-respondents have failed to produce documents. However, while examination of WW-2 Geeta Singh, it is evident that petitioner was discharging certain duties and even the signatures of the petitioner has been supported by WW-2 Geeta Singh vide Annexure P8. Therefore, the Labour Court erred in holding that petitioner has not made out a case that he had worked for 240 days, is incorrect. Had the Tribunal insisted the Management for production of documents which

were summoned by the petitioner? It would have been evident that petitioner had fulfilled the condition of 240 days continuous work. It was further contended by learned counsel for the petitioner that the decision of Supreme Court in ***Range Forest Officer's case*** (Supra) is distinguishable for the reasons that there the workman has filed only affidavit whereas in the present case, petitioner has summoned certain documents which are with the Management and who are custodian of those records. The same have not been produced. Therefore, the Labour Court award is liable to be set aside.

4. On the other hand, learned counsel for the respondents submitted that the petitioner failed to prove that he has worked for 240 days. It was further contended that Gram Shilp, Khadi Gramodyog Ayog, Mission Chowk, Sonapat was closed on 31.03.2002. Therefore, the petitioner has not made out a case so as to seek reinstatement. The Labour court has examined the evidence on record and gave finding that petitioner failed to prove that he has worked for 240 days. Hence, there is no infirmity in the Award passed by the Labour Court.

5. Heard learned counsel for the parties.

6. The Labour court refused to grant claim made by the petitioner on the sole ground that he did not fulfil the condition that he has worked continuous for 240 days so as to attract various provisions of the Industrial Disputes Act, 1947. Further, Labour court relied on decision of the Apex Court in ***Range Forest Officer's case (Supra)***. The petitioner submitted application for production of various documents. The respondents have not furnished complete documents. In other words, full records have not been placed before the Labour Court. Consequently, relying on decision of Apex Court passed in ***Range Forest Officer's case (Supra)*** is incorrect for the

reasons that the Supreme Court refused to grant relief only on the sole reason that merely filing of an affidavit by the workman does not construe that he has discharged duties for 240 days. In the present case it is not so, for the reasons that there are documents which demonstrate that the petitioner has worked. For no reasons, the respondent-Management have failed to produce complete documents despite summoning for those records. Therefore, the adverse inference can be drawn that the petitioner has worked for 240 days. However, the petitioner is not entitled for reinstatement for the reasons that he has worked for less than 3 years with the respondent-Management. That apart, the Branch of Gram Shilp, Khadi Gramodyog Ayog, Mission Chowk, Sonapat where the petitioner was working was closed on 31.03.2002.

7. In view of the facts and circumstances, the petitioner is entitled to compensation only in view of the Supreme Court decision passed in case titled as ***Bharat Sanchar Nigam Limited versus Maan Singh*** reported in 2012(1)SCC 558. The respondents are directed to pay compensation of Rs. 2 lacs within a period of 3 months from today. If the compensation amount is not disbursed within the time stipulated, the petitioner is entitled for interest @ 9 % per annum from the date of this order.

07.09.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No