

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27237 of 2013

Date of Decision:-17.11.2016.

Kamal Singh

.....Petitioner

Versus

Industrial Tribunal-cum-Labour Court, Rohtak and another

.....Respondents

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

Present: Mr. Nitin Rathee, Advocate for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has assailed the award passed by the Industrial Tribunal dated 8.8.2013.

2.) The petitioner was appointed as a daily wager in the respondent-Forest Department in the month of July, 1989. He is stated to have been terminated in the month of August, 1999. The Industrial Tribunal framed the following issues:-

(1.)Whether termination of services of petitioner is justified and if, not to what relief he is entitled to? OPM

(2.)Whether Forest Deptt. is not industry u/s 2 (j) of the Act:? OPM

(3.)Relief.

3.) The Industrial Tribunal after perusal of the records held that the

petitioner failed to establish that he has worked for 240 days. Thus, the Industrial Tribunal declined to interfere with the dispute. Hence, the present petition.

4.) Learned counsel for the petitioner submitted that complete records have not been brought before the Industrial Tribunal to decide the dispute as is evident from para 8 of the award wherein it is observed that record relating to month of April, 1985 to March, 1996 has been destroyed. Thus, inference should have been drawn that the petitioner has worked for 240 days in any of the calendar year. Therefore, the Industrial Tribunal has taken only records which are against the petitioner. Thus, the Industrial Tribunal erred in holding that the petitioner is not entitled for the relief sought before the Industrial Tribunal.

5.) On the other hand, learned counsel for the second respondent submitted that there is no error committed by the Industrial Tribunal for the reasons that in para 10 of the award, with reference to documentary evidence, it is held that the petitioner has not completed 240 days in a year. Thus, there is no violation of Section 25-F of the Industrial Disputes Act, 1947 so as to interfere with the order of termination.

6.) Heard learned counsel for the parties.

7.) Perusal of para 8 and 10 of the award, it is evident that some documentary evidence has been taken into consideration to hold that the petitioner has not completed 240 days. Mere destroying of record for the period from April, 1985 to March, 1996 Industrial Tribunal cannot draw inference that the petitioner has worked for 240 days. Having regard to the dates and events mentioned in para 10 of the award wherein the petitioner

from 1989 to 1996. It is evident that the petitioner has not worked for 240 days. Learned counsel for the petitioner relied on decision of this Court which is reported in **2013 (3) SLR 582 (Bala Devi @ Roopa Vs. The Presiding Officer and others)**. In para 9 it is held that complete record was not placed before the Labour Court. Even assuming that complete record is made available having regard to the fact that the petitioner has not worked in the entire month as is evident from para 10 of the award he has worked only 6 to 31 days on various months during the period from 1989 to 1996. Therefore, the decision cited by the petitioner is distinguishable and the same is not applicable in the present case. Learned counsel for the petitioner also relied on decision of the Supreme Court reported in **(2007) 4 SCC 94 (Sriram Industrial Enterprises Ltd. Vs. Mahak Singh and others)**. In para 34, it is held that non-production of attendance register and muster rolls for the year 1991, an adverse presumption can be drawn. No doubt adverse presumption could have been drawn whereas in the present case, material is on record that the petitioner has not worked in the entire month during the year 1989 to 1997 so as to contend that he has worked for 240 days. Therefore, cited decision is not applicable so as to draw adverse inference that the petitioner has worked for 240 days. Hence, there is no lacuna or error committed by the Industrial Tribunal while passing award.

8.) Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

November 17, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.