

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17683 of 2013(O&M)

Date of Decision: 12.05.2017

Divisional Forest Officer, Panipat

...Petitioner

Vs.

Ramphal & another

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishal Garg, Addl. A.G. Haryana.

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

RAJIV NARAIN RAINA, J. (Oral)

Mr. Vishal Garg, Addl. A.G. Haryana states that last drawn wages have been paid to Ramphal in terms of Section 17-B of the Industrial Disputes Act, 1947.

The petitioning Forest Department in its reply on facts did not deny the assertion of the workman in his demand notice that he had worked for 9 years before his services were illegally terminated on July 06, 1996. He named the Forest Guard, Manohar Lal who had removed him from work without any reason. He had orally informed the workman that Government has discontinued the muster roll system. The workman pleaded that he went time and again to workplace to be assigned duty and met with the Forest Guard but was always told off saying that sanction of work has not been received from the Government and whenever sanction was received he would be recalled. For 7 years, that is, from July 06, 1996 till February 17, 2004, the workman Ramphal waited for Godot and then raised a dispute which was referred to the Labour Court, Panipat.

In para. 1 of the written statement filed by the Forest Department before the Labour Court the following assertion by way of admission has been made by the Forest Department, which reads as follows:-

“That para no.1 & 2 of the demand notice/claim statement is wrong & hence denied. It is wrong that the applicant had work continuously 9 years with the Management. The applicant had worked with breaks in the Forest department under various schemes in different periods on daily wages as casual seasonal daily wages Labourer according to the availability of the work as he admitted in his demand notice. Rather he was engaged by the Forest Guard as daily wage labourer when the work was available in field and was paid as per the wage rate fixed by the Labour. Department, Haryana. Any other record has not been provided by the applicant which could show that the applicant which could show that the applicant had worked the period specified in demand notice filed by work man.”

In para 5 of the written statement in the preliminary submissions the department admitted that the applicant had worked as daily-wager like other labourers. In the Forest Department labourers are engaged as and when their services are required for carrying out various works in the particular scheme till the completion of work. Apart from this crucial admission, legal issues were raised which that the claim was time barred. State argued that the workers were not appointed against a regular sanctioned post. The burden of proof was on the workman and not on the management to prove jurisdictional facts. Workman was not entitled to back

wages and on each of these accounts the case law is cited to repel the claim.

The Labour Court has not believed all these peripheral contentions and has held that the workman served for 9 years may be with some interruption but with annual continuance all the same till the date of cessation of service with 240 days put in during the 12 calendar months preceding the date of termination. When the management raised an argument under Section 2 (oo) (bb) of the Act and the exceptions spelled therein the Labour Court expressed no opinion and rightly so when such argument was not tenable and could have been ignored in the consideration in the making of the award which is fair and just. If the management set up a case of contractual service then that was a second admission that employment continued over the period claimed by the workman and this militates against the stand of the management that termination was in accordance with law. Far from it, the oral termination was in violation of the provisions of the law in the ID Act and was rightly held to be illegal.

I find no legal infirmity in the impugned award or an error apparent. The petition is without substance and is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

12.05.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>