

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

207

CWP-24563 of 2012

Decided on : 28.11.2017

Pawan

... Petitioner

Versus

The Presiding Officer and another

.. Respondents

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

Present : Mr.Gopal Sharma, Advocate
for the petitioner.
Mr.Rajesh Gaur, Addl.AG, Haryana

P.B. Bajanthri, J. (Oral)

In the instant petition, the petitioner has challenged the award dated 16.4.2012 (Annexure P-3) passed by the Labour Court.

The petitioner is stated to have been appointed as Beldar-cum-Mali on 1.3.1991 by the respondent-Forest Department on daily wage basis. His services were terminated on 30.09.2004. He raised a demand noticed on 14.1.2008. The reference was decided by the Labour Court against the petitioner-workman. Hence, the present petition.

Learned counsel for the petitioner submitted that Labour Court has erred in not considering the factual aspect in respect of summoning of record since the official of respondent department failed to produce complete record during the period from 1991 to 2004. Moreover, one Shri Ishwar Singh who has deposed that in the year 2004, they have entered into a contract, thus, the petitioner has not worked during 2001 to 2004. No material has been placed on record by the official respondent to the extent that petitioner's services were engaged on contract basis during

period from 2001 to 2004. Hence, the Labour Court erred in giving finding that the petitioner failed to establish that he has worked during period from 2001 to 2004.

Per contra, learned counsel for the respondent while resisting the claim of the petitioner, submitted that no doubt, initially, the petitioner was appointed on daily wage basis, later on, his services have been engaged on contract basis (piece rate contract system). Therefore, the Labour Court rightly appreciated the factual aspect relating to non-working of the petitioner during the period 2001 to 2004 as a daily wager. Hence, no interference is called for.

I have heard learned counsel for the parties.

Labour court has not appreciated summoning of the record read with record which was produced by the official respondent. In other words, complete records which was summoned, were not produced. To contend that petitioner services were engaged on contract basis for the period from 2001 to 2004. No material has been placed on record except statement made by Sh.Ishwar Singh to the extent that contract services were taken for the year 2004.

Faced with these material facts, Labour Court has erred in holding that the petitioner has not worked from 2001 to 2004. Petitioner has raised a demand notice first time on 14.1.2008 with response to order of termination dated 30.09.2004. Having regard to the conduct of the petitioner, he is not entitled for reinstatement with continuity of service and back wages. In view of the Supreme Court's decision in **Bharat**

Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177 wherein para 33

reads as under:-

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.”

Grant compensation to the petitioner would suffice. In identical matter, Labour Court awarded compensation to the extent a sum of Rs.1,60,000/- vide order dated 16.4.2012 (Annexure P-4).

Having regard to the service rendered by the petitioner from 1991 to 2004, he is entitled to compensation of Rs.3 lacs. The same shall be disbursed by the concerned respondent within a period of three months from today. Failing which petitioner is entitled interest at the rate of 6% per annum from today. Accordingly, award of the Labour court is modified.

With the above observation, petition stands disposed of.

[P.B. Bajanthri]
Judge

28.11.2017

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No