

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

Date of decision: 18.05.2017

CWP No.6275 of 2012

Gurmeet Singh

...Petitioner

Vs.

The Presiding Officer, Labour Court, Bathinda & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.S.Kanwar, Advocate, for the petitioner.

Mr. Ajaib Singh, Addl. AG, Punjab,
for respondents No.2 & 3.

RAJIV NARAIN RAINA, J.

Employment relationship with the petitioner claimant was not disputed by the respondent Forest Department, Punjab before the Industrial Tribunal, Bathinda in Reference No.293/2007/98. The claim was resisted by the Department on the ground that workman used to be engaged from time to time as per requirements of the Forest Department. After completion of work, his services were dispensed with automatically. In other words what they meant was desultory engagement from time to time. The Department refuted the assertion that the claimant worked as Chowkidar in its ranks and rather he was appointed against the budget and scheme. It was pleaded that the claimant had not worked continuously for 240 days in a calendar year preceding his alleged termination from 09.12.1996, whereas the claimant pleaded that he had worked from 1988 till his services were terminated.

The claimant put in his replication, which was made part of the pleadings, when issues were framed. He appeared in witness-box as his

own witness WW-1 and tendered into evidence his affidavit Ex.WW-1/A. On the other hand, the management examined Jagjit Singh, Forest Range Officer, as MW-1/A, who tendered his sworn affidavit Ex.MW-1/A.

The first four issues were decided together i.e. reference was not maintainable; whether the workman had no *locus standi*; as to whether the management is not an 'industry' and whether the order of termination of services of the workman is justified. The fifth issue was regarding relief. The onus of all the four issues was placed on the management as per award.

It is argued by the petitioner that the Labour Court started its discussion on the case on the wrong footing in trying to examine whether the claimant falls within the definition of "workman" as provided under "Section 25-B" of the Industrial Disputes Act, 1947 (for short 'the Act') and then proceeded to reproduce the entire provision, which hardly had any bearing on the case. Section 25-B of the Act only defines continuous service in a special and artificial way to further the socially beneficial scheme in the Act introducing the principle of 240 days of uninterrupted and continuous service to constitute the period of one year counted backwards from the date of termination, discharge, retrenchment or dismissal.

Having embarked in the wrong direction the court fell in grave error by shifting the onus on the claimant workman all the four issues without the burden being discharged by the management and in this was led astray. The Labour Court in Para.10 while reading Section 25-B strangely shifted the onus midway on the claimant that he was supposed to lead evidence to establish that he had in fact worked for 240 days when it was his assertion to start with. No specific issue was struck on the jurisdictional fact of person claiming to be workman. Unless, the moot issue naturally falls for consideration in open-ended maintainability of the claim as per Issue No.1.

The issue of maintainability was on the management to prove and, therefore, the authorized representative of the claimant was correct in his argument as noticed in Para.11 of the award that the Department had failed to produce record intentionally so that the claimant could not derive any benefit and management would win by default. The record was summoned from the management time and again by the claimant as well as from Jagjit Singh, MW-1 but still it was withheld and not produced and an explanation was given for non-production of the record that the same was not available in the office or that the same could not be traced out despite best efforts. Due to non-production of best evidence an adverse inference should have been drawn argued the claimant and he was not wrong in his contention. The muster rolls would have been the primary evidence of employment as also the attendance and payment register to calculate the requisite number of days worked in the preceding calendar year and the period before that. None of which were produced. But still the Labour Court dismissed the reference by shifting onus on the claimant when the issues as framed did not warrant such a conclusion. Therefore, it has become necessary to reproduce all the five issues verbatim. The same read as follows:

- “1. Whether reference is not maintainable? OPM
2. Whether the workman has no locus standi to file the claim? OPM
3. Whether the management is not an ‘Industry’ within the meaning of the I.D.Act? OPM
4. Whether the order of termination of services of the workman is justified and in order? OPM
5. Relief.”

The total discussion on the case of any meaningful value is contained in sketchy form in para.12, the contents of which are reproduced below:-

“12. I have considered the aforesaid submission of the learned representative of the workman, but find the same to be of no legal weight, especially, in the circumstances that this onus was upon the claimant and there was a specific stand taken by the management/respondents that claimant was employed against the budget and scheme on daily wages and after the completion of the specific work, his services were used to be dispensed with. Since, the claimant was not able to prove himself to be workman as defined in provision of Section 25-B of Act, therefore, neither he was required to be served any charge-sheet nor any enquiry was required to be conducted. So, on this score alone, it can be safely concluded that neither he is workman nor instant reference is maintainable. So, issues No.1, 2 & 4 are decided in favour of the respondents and against the workman.”

Can such reasoning sustain in law as legal reasoning and be applauded? I would think far from it. The work of the Tribunal boils down to non-suiting the claimant on the untenable reason that he was employed against budget and scheme on daily wages and after completion of the specific work, his services used to be dispensed with. Was this in concert with law of termination and that too without resort to the mandatory procedure laid down in the Act to uphold the act termination of service without compliance of Section 25F of the Act?

The theory propounded by the management that the claimant was short of completion of 240 days stands discredited by non-production of record even though requests for production made failed to yield positive results. Instead, a story of missing record was set up and the labour court brushed it under the carpet. There was abject failure to draw adverse

inference by legal fiction that in case it was produced it would demolish the case of the management. As against the evidence of the management, the workman was supported by his pleadings and by his oral testimony recorded, which evidence was neither noticed nor examined or discussed by the Tribunal.

There is no discussion at all on Section 25F of the Act or possibly Section 2(oo)(bb) with the thread of employment coming to end in terms of a stipulation in the contract or ending every day at sunset or thereafter if claimant was a night chowkidar given the claimant was a labourer on daily wages. None of these vital issues so precious to the understanding of a case in labour laws fired the imagination of the Presiding Officer, Labour Court, Bathinda for which reason the award cannot be sustained in law and has to be set aside. It is ordered accordingly.

The result of the discussion is that the petition is allowed and the reference is answered in favour of the workman and against the management. The award is set aside. The petitioner will be entitled to reinstatement and full back wages with continuity of service in the original position.

18.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>