

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

Date of decision: 26.05.2017

CWP No.9238 of 2014

Gulab Singh

...Petitioner

Vs.

The State of Haryana & others

...Respondents

CWP No.9922 of 2014

Anand

...Petitioner

Vs.

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gitish Bhardwaj, Advocate, for the petitioner.

Mr. R.T.Redhu, DAG, Haryana, for the respondents.

RAJIV NARAIN RAINA, J.

This order will dispose of abovementioned two writ petitions arise out of Reference No.18 of 2010 and Reference No.04 of 2010 respectively. The claimant in Reference No.18 of 2010 was Gulab Singh and in the other Anand. They were both engaged as Beldar -cum- Mali to serve at Hansi Range under the Divisional Forest Officer (Territorial), Forest Division, Hisar. Gulab Singh was appointed on 01.01.2004 while Anand on 27.11.2001. Their services were terminated on 16.01.2009 and 08.03.2009

respectively. They pleaded that in doing so, the respondent – Department had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short ‘the Act’). Their retrenchment was without notice, notice pay or payment of retrenchment compensation, as provided by Section 25-F of the Act. They had both completed 240 days in every calendar year preceding the date of termination.

Aggrieved by their removal from service, they raised separate industrial disputes with the management. The conciliation failed before the Labour Officer upon which the disputes were referred to the Presiding Officer, Industrial Tribunal -cum- Labour Court, Hisar, who by identical awards has rejected their claim for reinstatement. The claimants have got no relief from the Labour Court, which has brought them to this Court by way of present petitions assailing the award as erroneous on law and facts.

Before the Labour Court the claimants alleged termination was illegal for violation of not only the provisions of Section 25-F, but also of Sections 25-G and 25-H of the Act. The defense of the department was that the Forest Department is not an ‘industry’ as defined by Section 2(j) of the Act and thus the provisions of the Act were not attracted. The Department denied that the petitioners were engaged as Beldar -cum- Mali by verbal orders. They were not employed on any post at any point of time and the claimants were false in their statements. However, the management admitted that the petitioners worked in the Department on contract basis and payments were made for the work executed and thus, there was no relationship of employer – employee between the Department and the petitioners. Management pleaded that the petitioners were independent

contractors who bid for work and were paid as per contract. With these averments, the respondents sought dismissal of the claim.

The parties led their oral and documentary evidence to substantiate their respective cases. In the face of absolute denial of facts and the case asserted by the claimants, they moved appropriately, applications for issuance of direction to the respondent to produce muster rolls, issuance register, cash book and bill book for the period in question pertaining to Hansi Range of the forest department. On the applications, the Labour Court issued directions to the respondent to produce the record, which was produced but in part. From the department record, it was revealed that Gulab Singh and Anand - petitioners had worked with the respondent on contract basis during the period from 'July, 2006 to June, 2007' and 'August 2005 to July, 2007' respectively and were made payments of the works executed by them. By separate applications, at the stage of rebuttal evidence, the prayer of the petitioners was accepted and the respondents were directed to produce originals of Annexure 1 to Annexure 5. Those documents were produced and from the record it was found that the petitioners were also employed by the respondents in the months of December, 2007; February, 2008 and March, 2008, but were paid salary through bills. This aspect is crucial to the case and may tilt it in favour of the petitioners. This also gave rise to a arguable dispute as to the status of the petitioners; whether they bore direct relationship by direct payment of wages/salary or worked on contract basis independently. There is evidence to suggest both but the question is which should prevail. To support the plea in the Forest Department that engagements were on contract basis must be supported by evidence of contract if they are to be believed. No such contract was produced and

merely because in the official record they are shown to have worked on contract basis would not be sufficient to conclude that they were contractual employees working on theka. To conclude that the stand of the management was meant to deprive them of their industrial rights by resort to a stand, which would amount to unfair labour practice and, therefore, the argument of the claimants before the Labour Court that such a view should not be accepted on the evidence appears to be a well founded argument. The Presiding Officer easily believed the story of the contractual status of the employees by a refusal to consider the entire record in its correct perspective and without delving deep into the papers on file. The assertion of the workers was that they had been employed either from 2001 or from 2004 serving till 2009, is not covered by evidence to rebut the stand of the petitioners that they were employees of the department and since the entire record was not produced by the management to cover the entire period their case is on weak footing and if the entire record was produced [it was produced selectively for the brief periods mentioned above] it might have gone against the State. Instead of drawing an adverse inference against the management at this crucial juncture, the Labour Court fell in serious error in restricting its view to examination of record from 2005 to 2008 alone.

To understand the working of the mind of the Labour Court, it would be best to reproduce paragraph 13 from Anand's case in which the falsity of the claim of the management comes out in full bloom and despite taking cognizance of the most vulnerable issue of unfair labour practice, the Labour Court still proceeded to dismiss the reference. Paragraph 13 reads as follows:

“13. On the other hand, it is submitted by the Ld. Govt. Pleader for the respondents that the claim of the petitioner that in fact he was employed by the respondent and in the record he was shown to have worked on contract basis with a view to deprive him of his rights under the Act and other labour laws was absolutely false. They falsity of the claim of the petitioner, submitted the Ld. Govt. Pleader, can be judged from the fact that to work on contract basis, the petitioner had submitted quotations copy of which has been placed on the file as Ex.M-2 to Ex.M-6 and he was made the payment of the works so executed by him on contract basis ranging from Rs.3800/- to Rs.18,000/-. The contention is that had the petitioner been paid Rs.4200/- per monthn, the it could be said that in fact he was employed by the respondent on payment of said salary, but in the record he was shown to have worked on contract basis with a view to deprive him of his rights under the Act and other labour laws, but he was paid the amount ranging from Rs.3800/- to Rs.18,000/-. Ld. Govt. Pleader further submitted that on contract too the petitioner had worked only during the period from August 2005 to July 2007 which according to Ld. Govt. Pleader belies his claim regarding employment for the period from 27.11.2001 to 07.03.2009. On the point of employment of the petitioner by the respondent in the months of December, 2007, February, 2008 and March, 2008, Ld. Govt. Pleader submitted that it was true that in those months the petitioner was employed on payment on daily wages, but he was paid the salary through bills which Ld. Govt. Pelader fairly conceded was not fair and was an act of unfair labour practice, but submitted that on that ground alone the claim of the petitioner regarding his employment for the period from 27.11.2001 to 07.03.2009 should not be accepted.”

Their was a clear and categorical admission based on record from the Government Pleader representing the Forest Department that at least for some of the periods, payments were made on daily wages and

salary was paid through bills, which he fairly conceded was not fair thing to do and was an act of unfair labour practice. If in paragraph 14, the Labour Court agreed with the contentions of the Government Pleader, then ex facie what had followed in the decision making by the Court is a wholly erroneous view of the evidence. It is well settled that unfair labour practice, when falls in the entries in The Fifth Schedule of the Industrial Disputes Act, is a condition fatal to the termination. Unfair labour practice in labour law is one and the same thing as mala fides and bias are in service law. They both destroy the executive action and vitiate it as one taken in colourable exercise of power to terminate. The story of quotations submitted by the petitioners has clouded the mind of the Labour Court and the two principles of payment one by way of quotation and payment on daily wages and salary are contradictory. The Labour Court fell in error in the reasoning that if the petitioners were employed in the months of December, 2007, February, 2008 & March, 2008 and at the same time paid salary through bills it failed to consider that that was still evidence and sufficient to prove the claim regarding direct employment for the periods claimed by the petitioners. This is where the grievous error has occurred since there is no indication in the award that the entire record was produced and examined. In fact, the inference is to the contrary. The workmen had filed applications for production of entire record. The relevant extract from the application in Anand's case is as follows:

“2. That it is quite necessary to call up the concerned below mentioned service record from the respondent in the Hon'ble Court to prove the truth in the Hon'ble Court:

(i) From 27.11.2001 to 07.05.2009 all the concerned original record; muster roll issue register,

muster roll, cash book & bills relating to all the schemes of various blocks of Hansi Range;

(ii) Upto date register of payments & presence relating to work done by all the skilled & unskilled workmen since 27.11.2001.

Hence, it is requested to the Hon'ble Court that all the service record, detailed above be called in the Hon'ble Court."

Similar application was moved by Gulab Singh requisitioning the record from 01.01.2004 to 15.01.2009. However, it appears that though the record was produced, it was produced selectively. If the management was falsified by its own admission by the Government Pleader that daily wages were paid through bills, then the entire stand has to be falsified. False in part is false in whole. Failure to produce the entire record has to be held against the management. The Labour Court also should not have relied upon the list of 2390 workers produced as Ex.W-5 by treating the same as record without calling for the statement to be put on affidavit by the department and offering opportunity to the petitioners to explain the names therein that persons were retained or had been inducted subsequent to their termination.

There is another facet to be examined. On 26.09.2012, both the workmen filed their respective affidavits that they had not signed on the quotation and the signatures were forged. Neither the management nor the Labour Court thought it fit to send the quotations to a hand-writing expert for opinion as to their genuineness, as the onus on the contents of the affidavits had shifted on the management. The Presiding Officer blindly relied on the quotations, without even commenting that he was satisfied by comparing those signatures with the signatures available on record if they were available, to make him think that the claimants were independent

contractors though the Court does not say so expressly in the award but aim at doing so. That appears to be the line of thinking which is not commendable.

It is contended by the counsel for the petitioners that in the cross-examination of MW-1 Baru Ram, Range Forest Officer, Hansi recorded on 01.05.2013, witness admitted that the payments to the workmen were made through bills. He further stated that the bills had been sent to the office of the Accountant General, Haryana and, therefore, could not be produced, which was the ostensible reason given by the management for non-production of record. The management could have always supported its stand by photocopies with the assurance that the originals would be produced as and when available, but they failed to do so.

On the other hand, Gulab Singh while appearing as WW-1 in his cross-examination was asked whether he was working on contract, but he denied the suggestion and asserted that it was wrong that he was doing work as a Contractor with respondent. He had stated that he was paid Rs.95/- per day in the year 2004. He made this statement on 22.05.2012 before the Labour Court on solemn affirmation deposing that he used to be paid collectively for 4-5 months at a time and many times he was paid his salary for 7-8 months together. He was honest enough to admit in his cross-examination that he has received full payment. The Labour Court has not considered this oral evidence and I have no reason to disbelieve it or that it should have been ruled out of consideration. This statement was made by recall of witness for cross-examination by the Government Pleader. Even then he failed to elicit a case sufficiently in favour of the management.

A perusal of the written statement filed by the management before the Labour Court confirms the belief that the claimants did indeed work in Hansi Range [see paragraph 2]. While admitting employment or engagements or extracting work from the petitioners, they took the case to payments made on quotations against the bills on completion of work.

Besides, the Labour Court did not draw its attention to the definition of 'wages' in Section 2(rr) of the Act, which means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment. If the workers were contractual employees, there is no appointment letter or signed contract to confirm the fact. The arrangement was oral. If they are not 'workmen', then it hangs in disbelief as to why daily wages and salary were paid through bills. The moment payment of daily wages is admitted then employment relationship comes into existence and the defence that the workers were employed on contract basis stands falsified. Even employment on contract basis falls within the purview of Section 2(s) of the Act and person becomes workman or employee. Mere oral statements unsubstantiated by entire record of service is of no help to the management upon whom the onus was when the applications were allowed and directions issued for production of entire record. If it was not produced, then it is to the peril of the management and an adverse inference can well be drawn that if the part withheld was produced, it would be against the management. This type of reasoning is missing in both the awards. The Labour Court has repeatedly fallen into error in restricting his examination to the period 2005 to 2008 and, therefore, incorrectly thinking by a

presumption that 240 days have not been completed counted backwards from January and March, 2009.

On these premises, the Labour Court held that violation of principles of Section 25-F of the Act was not proved. The Labour Court again fell in error in thinking that payment of wages through bills would deprive workmen of their rights under the Act. It matters little as to the form in which payment is made so long as payments of money are admitted and the existence of petitioners working on the premises of the department for their work is not denied on the projects executed in Hansi Range.

Referring to Section 25-G and 25-H of the Act, the Labour Court found insufficient evidence to support the plea as to whether persons junior to the petitioners were retained in service or others inducted after the termination? Without going into this question, I would in the totality of facts and circumstances and on account of the restricted evidence produced by the management hold that the stand of the management does not inspire confidence, faith and trust. They have not come clean at the trial. If the Labour Court did not draw an adverse inference when it should have, I would like to do so and hold that even if the services or the engagement was on contract basis or daily wage basis, there was discernibly a relationship of employment between the parties and if it was so then the manner of putting it to an end was in violation of the law in Section 25-F of the Act. The issue whether the Forest Department was an 'industry' was rightly not pressed by the Government Pleader at the hearing.

On a consideration of the matter I am convinced that the principle of adverse inference is strong and reliable enough to piece the case together for relief with the evidence suggesting itself as one leaning

positively in favour of the petitioners and against the management and by the award they were wronged.

For the reasons stated above, the impugned awards cannot be sustained in law. Consequently, both the writ petitions are allowed and the awards are set aside. The petitioners are reinstated to service with continuity but as far as back wages are concerned I feel that payment of 50% would serve the ends of justice. Order be complied with without delay.

26.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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