

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

Date of decision: 03.03.2017

CWP No.4249 of 2017 (O&M)

Ajmer Singh

.... Petitioner

Vs.

Presiding Officer & anr.

.... Respondents

CWP No.4264 of 2017 (O&M)

Vijay Singh

.... Petitioner

Vs.

Presiding Officer & anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Lajpat Sharma, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of both the above captioned writ petitions as common question of law is involved. The brief facts of the case are taken from CWP No.4249 of 2017.

The petitioner was engaged as Security Guard to watch the ATM of Allahabad Bank, Sector 8, Chandigarh. Allahabad Bank has outsourced the security of its ATMs to M/s Hawks International Security Services Pvt. Ltd., which was arrayed respondent in the claim application filed under Section 33-C(2) of the Industrial Disputes Act, 1947. The claim was against respondent No.2 demanding payment of overtime of four extra

hours of duty spent by the petitioner during his employment for six years i.e. from 2000 to 2006. Petitioner Ajmer Singh had worked from 18.10.2000 to 31.12.2006 while the workmen in other petition had worked from 18.10.2000 to 15.02.2006. The petitioner(s) filed separate claim applications before the labour Court in 2009 and 2011 claiming wages for four extra duty hours worked. The two asserted that they were engaged to serve in a cycle of 12 hours while there should have been employed three persons with eight hours each. The workman pleaded that the Bank run ATMs are to be guarded as per the terms and conditions of the written contract entered between the Allahabad bank and the respondent security agency for providing three security guards for day night duties. They claimed money due in a sum of Rs.4,51,219/- by Ajmer Singh and Rs.3,63,469/- by Vijay Singh in this manner with interest @ 12 %per annum.

Respondent No.2 put in appearance and filed written statement claiming that the petition is not maintainable; wages had been paid as per terms and conditions of the appointment and as per the terms of the arrangement between the Bank and the agency. The management produced the attendance register WX 1/1 to W1/10 from which the labour Court observed that a close perusal of these documents do not prove that the applicants had worked overtime. The attendance register revealed that the two workmen had worked for particular days but do not prove that they had worked for 12 hours a day. The onus was on the claimants to discharge to prove they had worked for more hours than they were required to perform

but the management had not paid extra money for extra time.

I find that during the course of 3/5 years, the petitioners kept mum and did not complain either to the security agency or the Labour Inspector or to the Allahabad Bank that they were exploited in the matter of payment for extra hours and this is a circumstance against them especially when delay in approaching to the labour Court after 5 years in 2011 alleging non-payment for overtime wages since 2000 is kept in view. In absence of documentary proof and legal evidence establishing that the applicants had worked for extra hours without due payment of overtime allowance and this state of affairs when coupled with the delay in filing the applications, the labour court drew reasonable inference that the claim was hollow as no person will sit quiet for such a long time and continue to work for more than 6 years without lodging protest or raising a dispute with the agency, the Allahabad Bank or the Labour Inspector of the area by way of a complaint or seeking legal remedy within reasonable time.

Ajmer Singh even did not lead oral evidence by way of testimony of co-worker Vijay Singh nor vice versa to establish by deposition in the witness box that they had worked shoulder to shoulder for 12 hours a day and were an exploited lot.

In the absence of all such corroborative evidence, it cannot be said with any amount of certainty that the petitioners had indeed served overtime and that too without a pre-existing right to enforce the same by way of execution proceedings, which Section 33C(2) prescribes procedure for.

No ground to interfere in the impugned order passed by the labour court is made out while acting under Article 226/227 of the Constitution of India.

Accordingly, both these writ petitions are found without any substance and is ordered to stand dismissed without any order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

03.03.2017

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1. Whether speaking/reasoned?

Yes

2. Whether reportable?

No