

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

Date of decision: 07.04.2017

CWP No.7410 of 2017

The District Forest Officer, Palwal & others ...Petitioners

Vs.

Prem Pal & another ...Respondents

CWP No.7459 of 2017

The District Forest Officer, Palwal & others ...Petitioners

Vs.

Lakhi Ram & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishal Garg, Addl. AG, Haryana,
for the petitioners.

RAJIV NARAIN RAINA, J.

This order will dispose of the abovementioned two writ petitions, as common questions of law and fact are involved in them, which can conveniently be decided by a common order.

Prem Pal and Lakhi Ram, the first respondent in both these writ petitions, worked as Mazdoors in the Reserve Forest Area of Sultanpur, Palwal, Haryana from 01.04.1990 to 28.12.2011, when their services were abruptly brought to an end by the local Forest administration disregarding the law in the Industrial Disputes Act, 1947. Their terminations led to raising of disputes, conciliation proceedings and upon failure, reference by the labour department to the Presiding Officer, Labour Court – 3, Faridabad in Reference Nos.R/18/2013 and R/15/2013 respectively.

The Management denied out rightly relationship of employment. They said that the workers were never employed by them. They referred to a Committee constituted by the department consisting of Forest Guards, Clerks & office bearers of the workers' Union for physical verification of the attendance record of the workers to number the employees working as labour. The Committee submitted a list of 53 workers to the Divisional Forest Officer, Palwal. The list was said to have been certified from the cash book maintained in the office. The names of Prem Pal and Lakhi Ram did not find mention in the list of 53 workers and this was a plank of defence for denying relationship of employer-employee in the written statement filed by the respondents-State before the Labour Court.

The Labour Court considered the issue elaborately in the Award and correctly premised holding that it is true that the initial burden to prove that the workmen had served for a period of 240 days in the 12 calendar months immediately preceding the date of their terminations, was on the workmen but the onus could shift.

As the law is, the burden being static; the onus to prove issue shifting like a pendulum depending on state of pleadings and evidence adduced by the parties on their turn.

The Labour Court held on evidence that workmen discharged the initial burden and proved their case by stating on oath that they were both in service since 01.04.1990 to 28.12.2011 and this oral evidence has falsified the stand set up by the petitioning Management. And if despite that the management insisted to maintain that the workman had not completed 240 days in preceding 12 months, the management was under obligation in law to produce the requisite original records for consideration of the Labour Court. Management had failed to produce the record of attendance register

and wages register despite applications filed by the workmen on 13.05.204 etc. for summoning the record. Non-production of record was destructive of the defence that workmen had never been in the employment of the petitioner forest department. The Labour Court was right in reasoning that the list Ex.D-3 of 53 workers was not a document which can be safely relied upon.

To the contrary, management's witnesses MW-2 Balram and MW-3 Vijender Kumar during their cross-examinations candidly admitted as correct that only the names of 53 workers are mentioned in the list Ex.D-3, whereas there were names of several other workers in the muster rolls whose names were not registered in the report of the Committee. They further admitted that the list was prepared by the office bearers of the workers' union of only those workers who were the members of the union and the record of all the workers was not prepared. Therefore, non-members also worked beside the 53 mazdoors. It was also admitted during cross-examination by these witnesses that from the year 1990 to 2011, about 200/250 workers might have worked in the Department, meaning thereby, that other workers were also in the employment of the management whose names are undisclosed. Under these circumstances, it was incumbent upon the management to produce the entire record of all the workers who had worked during the period from 1990 to 2011. In absence thereof an adverse inference was rightly drawn against the management.

The Labour Court drew support on this proposition from the observations of the Supreme Court in cases R.M.Yellatti Vs. The Assistant Executive Engineer, 2005 (4) SCT 695 and Gauri Shanker Vs. State of Rajasthan, Civil Appeal No.3701 of 2015 decided on 16.04.2015. In Gauri Shankar the Court relied on past precedent to observe:-

“5. ...Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai Vs. Gnana Sambandha Pandara Sannadhi, Lord Shaw observed as follows:

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to, the, Courts the best material for its decision. With regard to third parties, this may be right enough-they have no responsibility for the conduct of the suit but with regard to the parties to the suit it is, in their Lordships' opinion an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

The Labour Court inferred from the circumstances that the irrefutable presumption that permeates the record is that the workmen rendered uninterrupted service till their termination and, thus, the provisions of Section 25-F of the Act ought to have been complied with and in breach of the mandatory procedure, the termination is liable to be set aside as illegal.

On the question of monetary relief, the Labour Court reasoned from perusal of the evidence that the workmen had maintained in their claim statement that they remained unemployed ever since the date of their illegal termination and even had deposed to the factual state in oral testimony

recorded before the Labour Court. In the cross-examination by the Department, it was not even suggested that they had remained gainfully employed during the period of forced idleness and therefore, nothing was relevant was produced on record to prove gainful employment. And for this good reason, inter alia, the Labour Court reinstated both the respondents to service, namely, Prem Pal and Lakhi Ram with continuity of service, but placed a reasonable cut of 50% on the arrears of back wages from the date of termination till reinstatement. It is on this conspectus of facts and circumstances, that the Awards of even date dated 29.09.2016 have been announced by partly allowing the references with substantial relief.

It is trite law that material not produced before the Labour Court is not to be seen for the first time by the writ Court and therefore, the ones placed along with this file are to be disregarded in law for whatever their worth may be. They are mostly, at first sight, hand-written sheets of paper and are not the documents exhibited on record and do not inspire faith in them.

These two cases are squarely covered by two earlier decisions in almost similar fact situation arising in the Forest Department of Haryana. These are Maya Devi Vs. Presiding Officer, Industrial Tribunal -cum- Labour Court, Rohtak, 2012 (3) SCT 399 and Chinti Devi Vs. Presiding Officer, Industrial Tribunal -cum- Labour Court, Panipat, 2013 (3) SCT 597 against which appeals and SLPs have been dismissed. In *Chinti Devi's* case, I observed as follows:

“This Court is flooded with labour litigation involving the Forest Department, Haryana as witnessed in the recent past and having dealt with many writ petitions of late, this Court is veering to the view that the law of the jungle prevails in that Department. There appears to be large scale exploitation of marginalized labour in plantation, weeding,

hoeing and culture operations in forest areas across the State. Labour is exploited for many years and then the doors are shut on them forcing them to resort to the tardy process of industrial adjudication which takes many years. This case is no exception. It appears that Sections 25-F, 25-G & 25-H of the Industrial Disputes Act, 1947 have lost meaning in the Forest Department in the State of Haryana. Insensitive caretakers of public office and their field representatives ensconced in the almost impenetrable shell of Article 311 of the Constitution treat labour as expendable fodder without guilt or remorse, behaving like private entrepreneurs with no social obligations. The basic primary document, the muster rolls, are either fudged or not produced in evidence or are shown selectively to the Court making the task of adjudication a dreadful exercise. It is time to sensitize those who are responsible for implementing the provisions of the said Act and other sister labour laws of the devastating effect of their actions and in-actions, deliberate or otherwise, it is hard to say.”

Consequently, no ground for interference is made out in both these petitions. The impugned Awards do not suffer from any legal infirmity or perversity. No fundamental flaw is discernible in the twin awards. No error apparent of the face of record placed before me is visible therein and nothing has been brought to life at the hearing.

I have heard the learned law officer at sufficient length.

No merit. The petitions are, in limine, dismissed as not warranting issuance of notice to the workmen or admission to regular hearing or stay of Award, there being no question of law involved for resolution in exercise of writ jurisdiction.

07.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
No