

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

CWP No. 9920 of 2017 (O&M)

Date of Decision: 9.5.2017

Divisional Forest Officer, Territorial, Govt. Of Haryana, Forest Department,
District Kaithal and others

... Petitioners

Versus

Dharam @ Dharampal and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vishal Garg, Addl.A.G., Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. The defence of the Forest Department during the trial before the Labour Court on a reference made to it by the appropriate government was a denial of the relationship of employment. Dharampal was not their employee, period. He did not produce any documentary evidence to prove that he actually worked before the alleged date of termination. This reference was one of 22 references made by the appropriate government to the Labour Court, Ambala.

2. The Labour Court has awarded reinstatement with continuity of service alongwith 50% back wages and costs of ₹ 5000/- to be paid by the respondent-department to the claimant. The Labour Court has noticed in his order that the earlier cases filed by the co-workers and Dharampal were allowed by the predecessor Labour Court, Ambala and against those determinations 36 writs were filed by the Forest Department and all of them have been dismissed.

3. The period of service in the Saraswati Range of the Forest

to mid June 2014. Dharampal produced a co-worker as his witness WW2 Miya Singh who deposed that he worked with Dharampal in Saraswati Range from 1990 to 4th November, 2012 when he was removed from service. Miya Singh had in the past succeeded before the Labour Court, Ambala nullifying his termination and was as a result taken back on duty.

4. Dharampal's case stated was that he had worked under the VFCs, Haryali Scheme and FDA Scheme with the petitioning Management. The employment was direct without intermediary Contractor. Despite notice, the Management failed to produce the record of the muster rolls explaining it away stating that the record relating to list of muster roll employees were lost to record and a DDR No.12A dated 22nd July, 2015 Ex.M3 has been registered at Police Station, Pundri. The Labour Court has accepted the version of the claimant-respondent after appreciating the evidence on record and has relied on a large number of judgments including the judgment of the Supreme Court in Harjinder Singh vs. Punjab State Warehousing Corporation, 2010 (1) SCT 725 to reach the conclusion that the workman was an employee of the department; the requirements of Section 25F of the ID Act were not met at the time of termination; the mandatory procedure was given a go bye and an adverse inference has been correctly drawn from missing record of muster rolls, payment and attendance registers to conclude against the department and in favour of the Dharampal. On these premises, the Labour Court has awarded the relief of reinstatement by restricting arrears of back wages to 50% and I thus find no legal infirmity, disproportionality or unreasonableness in the making of the award.

5. This case has arisen out of the award against the Forest Department and under similar facts and circumstances and loss of muster

vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Distt. Panipat and another, (2013) 3 SCT 597 : 2014 (2) RSJ 3 and Maya Devi v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and others, 2012 (3) S.C.T. 399 : 2012 (3) RSJ 630 against which latter decision LPA No.251 of 2013 stands dismissed on February 7, 2013 and the SLP (Civil) No. 19192 of 2013 also stands dismissed on July 5, 2013 by the Supreme Court. I have no reason to depart therefrom since those cases apply broadly to the facts of instant matter. The impugned award is perfectly justified by relief given. There is no error apparent on the face of record.

6. For the foregoing reasons, this writ petition fails and is dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

9.5.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No