

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 13510 of 2014

Date of Decision: 20.11.2018

DAL CHAND

...Petitioner

Vs.

PB. STATE WAREHOUSING CORP. & ORS

...Respondents

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

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Prubjyot Singh Sidana, Advocate
for the respondents..

RAJIV NARAIN RAINA, J. (Oral)

1. When this matter came up for hearing on 16.07.2014, while issuing notice of motion, this Court focused the issue arising for determination as follows:

“Counsel contends that the Labour Court has recorded a categorical finding that the name of the petitioner does not figure in Exs. M-1 to M-4 and, therefore, the factum of having worked for 240 days preceding his termination has not been proved. Reference is made to Annexures P-2 to P-5 and their vernacular versions to demonstrate that the same are exhibited as Exs. M-1 to M-4 and the name of the petitioner figures in the same. It is accordingly contended that the complete record had not been produced for a period of one year

preceding the date of termination in spite of the application having been filed and, therefore, an adverse inference should have been drawn against the management since the case of the petitioner was that he worked from 1997 till 14.12.2004.

Notice of motion for 21.11.2014.”

2. After passage of time, when the case was heard on 13.11.2018, the following order was passed:

“Learned counsel for the respondents to show-cause why the award should not be set aside and the case remanded to the Labour Court for passing a fresh award after noticing and dealing with the muster rolls at page No. 28 & 29 of the LCR and also keeping in mind the interim order dated 16.07.2015 summing up the short dispute involved in this case.

List on 20.11.2018.”

3. The fundamental error in the impugned award has occurred in returning findings on jurisdictional facts regarding completion of 240 days by overlooking materials on record. The muster roll exhibits M-1 to M-4 ought not to have escaped the notice of the learned Labour Court in deciding the reference. And, then to have appreciated the evidence whether the workman has not put in 240 days of service in the 12 months preceding the date of termination. In absence of such a relevant consideration, the Labour Court has jumped to the conclusion that

workman had not developed industrial rights without paying due regard to the evidence on record as is culled out in the interim orders of this Court.

4. As a result of the error apparent on the face of record, the case deserves to be remanded for returning proper findings of fact. The petition is allowed. Award dated 09.12.2013 is set aside and the case is remanded to the Presiding Officer, Labour Court, Bathinda to pass a fresh award after taking into consideration the entire evidence available on record and dealing with it threadbare. In this exercise, parties will have no right to lead further evidence unless the Labour Court is of the opinion that it is necessary to do so in the interest of justice. The Labour Court will not be influenced by anything said in this order and will take an independent decision on the basis of record.

5. Parties to appear before the Labour Court, Bathinda on 13.12.2018.

20.11.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*