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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20513-2012

Date of Decision : October 3, 2018

The Executive Engineer

.... Petitioner.

Versus

Sh. Pardeep Kumar and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Pankaj Mulwani, Deputy Advocate General,
Haryana, for the petitioner.

Mr. Sudhir Paruthi, Advocate
for respondent No.1.

SHEKHER DHAWAN, J.

State of Haryana has challenged the award dated 08.02.2012 (Annexure P/5) passed by Industrial Tribunal-cum-Labour Court (for short, "learned Tribunal") in the present writ petition under Articles 226/227 of the Constitution whereby respondent No.1, Pardeep Kumar was ordered to be reinstated with continuity of service and 50% back-wages.

2. Facts relevant for the purpose of decision of this writ petition; that respondent no.1 – workman had raised an industrial dispute against the present petitioner on the ground that he was appointed as a Mate on 1.1.1991 on daily wages and his services were abruptly terminated on

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30.12.2000 without assigning any reason and without issuance of any notice or payment of retrenchment compensation in violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short "the Act").

3. Reference was made to Industrial Tribunal-cum-Labour Court. The Management had come with the plea before learned Tribunal that the workman was appointed on temporary basis on daily wages. Thereafter, he had left the job of his own and did not report for duty after 30.11.1991. There is no question of termination of his services. More so, the demand notice was issued after long delay i.e. on 26.07.2003. The Management had also taken the plea that the workman had not completed 240 days of continuous service in the preceding calendar year.

4. Learned Tribunal after considering all these facts decided the reference holding that the workman had put in 240 days of continuous service and his termination was illegal and ordered his reinstatement with continuity of service with 50% back wages.

5. The State of Haryana has challenged the said award, Annexure P/5 on the ground that learned Tribunal has not considered all these facts while deciding the reference. Undisputedly, the workman was working against temporary post and version of the Management is that the workman had left the job. Learned State counsel also contended that onus was upon the workman to prove that he had put in 240 days of continuous service, but that has not been proved before learned Tribunal and still the Tribunal decided the reference in favour of the workman. On this point, reliance was placed upon the decision of Hon`ble Apex Court in

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Surendranagar District Panchayat Vs. Dahyabhai Amarsinh 2006 AIR

(SC) 110, wherein Hon`ble Apex Court had taken the view that continuous employment of 240 days is to be proved by the employee.

6. Learned counsel representing the workman contended that on the basis of evidence available on the file before learned Tribunal, the findings were recorded and there is no ground to interfere in the award dated 8.2.2012 (Annexure P/5) passed by learned Tribunal.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record and after considering the judgment of Hon`ble Apex Court in **Surendranagar District Panchayat's case (supra)**, this Court is of the considered view that certain facts are not disputed in any way that the workman was appointed as a Mate with the petitioner-Management on 1.1.1991 on daily wages and his services were terminated on 30.12.2000.

8. The controversy involved in this case is - whether the services of the workman were terminated or he himself had left the job and the next point would be – whether the workman had put-in 240 days of continuous service and whether he was able to prove that fact before learned Tribunal.

9. As regard to the first contention raised by the Management, there was nothing on the file before learned Tribunal that the workman had abandoned the job. Had it been a case of abandonment on the part of workman, the Management should have issued some notice or initiated some proceedings for his absence as the workman had been in continuous service since 1.1.1991. There being no such material available on the file, learned Tribunal was justified in recording the finding in favour of the

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workman.

10. Now, coming to the point of proof of 240 days of continuous employment by the workman, initially the onus was upon the workman to prove his employment with the Management. The Management has not denied the relationship of employee and employee, though his status as temporary employee was challenged in the reply filed by the Management. If the workman had put-in 240 days of continuous service, he is certainly entitled to retrenchment compensation as required under Section 25-F of the Act. To that extent, learned Tribunal has rightly relied upon the statement of MW-1, Rajbir Sharma, SDO, who had admitted in his cross-examination that relevant record was not produced except Ex. MW-1/A and Ex. MW-1/B and on that count, learned Tribunal was fully justified in drawing adverse inference against the Management. As the record of employment was being maintained by the Management, the onus shifted upon the Management to produce the entire relevant record after admitting the employment of the workman with the Management.

11. As regard to the judgment in **Surendranagar District Panchayat's case (supra)**, the facts of the case in hand are certainly distinguishable because in that case, the workman relied upon his oral testimony only, but in this case, the Management failed to produce record of employment and the statement of MW-1 that the workman left the job of his own has rightly been turned-down by learned Tribunal and the same plea does not find favour with this Court even. In **Surendranagar District Panchayat's case (supra)**, even the relevant muster rolls were produced by the Management, but the same were not contradicted by the workman

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and on that account, Hon`ble Apex Court pronounced the judgment, but in the present case, relevant muster roll for the relevant period was not produced as admitted by MW-1 and learned Tribunal recorded the findings accordingly and decided the reference.

12. In view of the above, there are no grounds to interfere and set-aside the award dated 8.2.2012 (Annexure P/5). There is no merit in the present writ petition and the same stands dismissed

(SHEKHER DHAWAN)
JUDGE

October 3, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes