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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15000-2014

Date of Decision : August 16 , 2018

M/s Oriental Engineering Works Private Limited

.... Petitioner.

Versus

Presiding Officer, Labour Court,
Ambala and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. P.K. Mutneja, Advocate
for the petitioner.

Mr. Inderjeet Singh, Advocate,
for respondent No. 2.

SHEKHER DHAWAN, J.

Present writ petition by the Management, under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of certiorari to quash the award dated 31.03.2014 (Annexure P/11) passed by learned Labour Court, Ambala vide which the workman was held entitled to compensation of Rs.30,000/- in lieu of reinstatement.

2. Facts relevant for the purpose of decision of this writ petition; that respondent No.2, Darshan Lal, had raised an industrial dispute on the point that he was appointed by the Petitioner-Management on 2.5.2008 and he continuously served the Management till 17.8.2010 when his

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services were terminated in violation of provisions of Industrial Disputes Act, 1947 (for short "the Act"). No notice or salary in lieu there of or retrenchment compensation was paid to him.

3. Management contested the claim of the workman on the ground that he was not engaged during the said period and there was no relationship of employer and employee between the management and the workman.

4. Learned Labour Court on the basis of material available on the file, returned the finding vide impugned award dated 31.03.2014 (Annexure P/11) that respondent No. 2, workman had worked for a period of more than 240 days and his services were terminated without payment of any compensation or issuance of notice. As such, the workman was held entitled to lump-sum compensation.

5. Learned counsel for the petitioner while challenging the said award, contended that the learned Labour Court has completely ignored the material available on the file which establish that there was no relationship of employer and employee between the Petitioner-Management and the workman. In the written statement, before learned Labour Court, relationship of employer and employee was completely denied by the Management. The onus was lawfully upon the workman to prove that he had actually worked from 2.5.2008 to 17.8.2010, but he (respondent No.2.) had not led any evidence on this point. To the contrary, in the cross-examination of Darshan Lal, workman himself, he was not having any appointment letter or termination letter or any document

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showing wages or any other record establishing his employment with the present Management. Still the Labour Court pronounced the award holding relationship of employer and employee between the parties.

6. Learned counsel for the petitioner-Management also referred to the statement (Annexure P/8) of MW-1, Satish Kumar, LDC office of ESI, Jagadhri, who made statement that as per ESI record for the relevant year, the name of respondent no.2 workman, did not find mention and even this record and statement of official witness was disbelieved and contrary findings were recorded.

7. While arguing on this point, learned counsel for the respondent-workman contended that the workman had been able to prove that he had continuously worked with the Management for the aforesaid period from 2.5.2008 to 17.8.2010. The Management was not issuing any appointment letter to him nor passed any formal termination order, rather respondent-workman has been able to lay his hands on the material and documents, which were produced in his capacity as a poor workman. Respondent workman had placed on file Cycle-token, which was being used by him for entering the factory premises. Apart from that, he had also produced photograph showing the presence of members of the Management and workman. Immediately after his termination on 17.8.2010, the workman had got issued a demand notice giving all these facts. Learned Labour Court has rightly placed reliance upon the statement of the workman as well as the above mentioned documentary evidence which he had produced on the file and there are no grounds to

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set-aside the said findings of learned Labour Court.

8. Learned counsel for the respondent-workman placed reliance upon the judgment of Hon`ble Supreme Court in **Gauri Shanker Vs. State of Rajasthan**, **2015 STPL (Web) 321 SC** that in such like matters, while exercising writ jurisdiction, undue interference in the award of Labour Court is not required and justified unless there are valid and cogent reasons.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that that to decide a reference regarding termination of services of the workman being legal or illegal, the Labour Court was primarily required to give findings on the basis of material produced by the workman to establish his employment with the petitioner-Management. Hon`ble Supreme Court in **Range Forest Officer Vs. S.T. Hadimani**, **(2002) 3 SCC 25** has held that in case the workman claims his employment for a period over 240 days in the year, which is denied by the Management, it was for the workman to lead the evidence to that effect and if he fails to do so, the reference has to be decided against him. But, learned Labour Court has completely ignored this fact. This Court is saying so on the ground that the workman has admitted in his cross-examination itself that he could not produce any document showing his employment. No appointment letter was produced nor any document showing his EPF deduction or payment having been made on account of wages, rather, the Wage register was produced by the Management, where the name of the respondent-workman (Darshan Lal) was not mentioned. Labour Court has even

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ignored the official record which was produced by MW-1 and the statement made by MW-1, Satish Kumar on the basis of said official record that the name of the workman was not in the ESI record as well, which was being maintained regularly and the name of other workers of the petitioner-Management were recorded. Cycle token being relied upon by the workman does not bear the stamp of the Company-Management. Similarly, photos taken on some private function cannot be considered as proof of employment. But, still the Court below relied upon such material thereby ignoring settled legal position and material and evidence available on the file which was produced by the Management.

10. As regards to the judgment in **Gauri Shanker's case (supra)**, referred to by learned counsel for the respondent-Workman, the same is distinguishable on the facts because learned Labour Court has completely ignored the material and evidence available on the file which established that the respondent-workman was not working with the Management.

11. In view of the above, the present writ petition is accepted and the impugned award dated 31.03.2014 (Annexure P/11) passed by learned Labour Court, Ambala vide which the workman was held entitled to compensation of Rs.30,000/- in lieu of reinstatement is set-aside.

12. Resultantly, the writ petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

August 16, 2018.

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes