

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16538-2014

Date of Decision : Sept. 19, 2018

Soma Devi

.... Petitioner.

Versus

Principal, Senior Secondary Satish Public School,
Rewari and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Suneet Kumar, Advocate
for the petitioner.

Mr. Sanjay Mittal, Advocate,
for respondents No.1 and 2.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing award dated 13.09.2011 (Annexure P/1) whereby learned Industrial Tribunal-cum-Labour Court-I, Gurgaon (for short, "**learned Tribunal**") decided the reference against the workman.

2. Facts relevant for the purpose of decision of this writ petition; that the Lekh Raj (since deceased) (hereinafter referred to as "**the workman**") had joined the respondent-School on 01.08.1991 and his services were terminated on 31.12.2004. His appointment was on daily

...

wages but on regular basis. The workman challenged the termination before learned Tribunal and the reference was decided against the workman vide award dated 13.09.2011 (Annexure P/1). As such, the present writ petition before this Court.

3. Learned counsel for the petitioner, who is widow of Lekh Raj (the workman – since deceased) contended that the husband of the petitioner worked for a period of more than 13 years with the Management. Though his appointment was on daily wage basis, but his employment was continuous and regular.

4. Learned counsel for the petitioner further contended that learned Tribunal decided the reference against the workman mainly on the ground that he failed to prove his continuous employment of more than 240 days as he could not produce the record. While placing reliance on the judgment of Hon`ble Division Bench of this Court in **Bal Kishan Vs. Presiding Officer, Labour Court, Panipat, 1996(3) S.C.T. 548**, he contended that onus to prove and produce the service record is upon the employer as the same is being maintained by the employer. If the Muster Rolls or attendance register is not produced, the employer is guilty of withholding best evidence and the burden of proof is not discharged. But, learned Tribunal has completely ignored the legal proposition of law and returned the award against the workman.

5. While arguing on this point, learned counsel for respondents no.1 and 2 contended that the appointment of the workman was to provide drinking water during summer season only and he was being paid

...

at D.C. rates. Thereafter as no funds were received for his employment, the services of the workman were dispensed with and the case of the workman is covered under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (for short "**the Act**") and learned Tribunal has rightly decided the controversy accordingly.

6. Learned counsel for respondents no.1 and 2 further contended that the workman had not summoned any record. The appointment of the workman was on seasonal basis. He was being paid fixed salary as per D.C. rates.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record and after going through the view taken by Hon`ble Division Bench in **Bal Kishan's case (supra)**, this Court is of the considered view that the reference having been made by the workman, primarily it was his duty to make out a prima facie case regarding his employment and completion of 240 days of continuous service in the preceding calendar year. Undisputedly, the workman could not produce any appointment letter nor any record of employment was produced before learned Tribunal. There was statement by way of affidavit of present petitioner, who is widow of the deceased workman and his colleague of the workman, namely, Dalip Singh, who had tendered his affidavit. No application was moved for requisitioning of any record. As per judgment of Hon`ble Division Bench of this Court **Bal Kishan's case (supra)**, the employer is bound to produce the record if the relationship of employer and employee is admitted and some efforts are made by the workman to

...

summon the said record before learned Tribunal, but that has not been done in this case.

8. Identical matter was before the Co-ordinate Bench of this Court in **Vijay Kumar Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon and another, 2009(6) SLR 673**, where no efforts were made for requisitioning of record and the fact regarding completion of 240 days of continuous service having not been done proved, the award of learned Tribunal was held to be valid one.

9. In this case, learned Tribunal has also recorded the finding that appointment of the workman was on seasonal basis and the case of the petitioner was covered under clause © of Section 2(oo)(bb) of the Act and as per view taken by Hon`ble Apex Court in **Surender Kumar Sharma Vs. Vikas Adhikari and another, 2003(IV) Labour & Services Judicial Reports 62**, such a writ petition cannot be accepted. The facts of the case in hand are also quite identical.

10. In view of the above, there is no ground to interfere with the impugned award dated 13.09.2011 (Annexure P/1). There is no merit in the writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 19, 2018.
som

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