

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

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CWP-10599-2018(O&M)

Date of decision:01.05.2018

Sh. Rohtash Balmiki

...Petitioner

Versus

E.O.Municipal Corporation, Panipat and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajesh Goyal, Advocate for the petitioner.

P.B. BAJANTHRI, J. (ORAL)

In the present writ petition, petitioner has challenged the award passed by the labour court dated 10.07.2017. Labour court has recorded findings as under:-

"12. After hearing the arguments and after going through the oral and documentary evidence led by the parties, I have come the following conclusion:-

In that case, the stand of the workman is that he had worked with the respondents during the period from 10.03.13 to 22.1.14. But the workman had not produced any record, wages slip, appointment letter or any other document to prove his contention. The workman, during his cross-examination has admitted that he has no appointment letter or any other letter regarding engagement of his service. He has further admitted that he has no proof regarding salary which was given by the respondents department to him. The summoned witness namely Sh. Dharam Pal Clerk as WW2 proves the case of the management and stated that as per

*record the workman had never worked with the respondents department. Another witness namely Sh. Vikas as WW3 has admitted during the cross-examination that he has no document/proof relating to the workman which shows that the workman was working with the respondents department. The solitary witness of management as MW1 namely Sh. Dharam Pal has admitted during his cross-examination that as per record the workman never joined services in the respondents department. From afore-discussed evidence, it is proved on record that the workman was not appointed by the respondents department nor he had worked. The workman has not been able to lead any other cogent evidence on the file to prove the fulfilment of the pre-requisite of the completion of continuous service of 240 days by him, as provided under Section 25-B of the Act. Thus, his afore-discussed testimony remains uncorroborated on the file. Thus, he has withheld the best possible evidence from being produced on the file. It is well-settled law that it is entirely for a workman to prove the fulfilment of the pre-requisite of completion of his continuous service of 240 days as an employee of the management, as envisaged under Section 25-B of the Act, so as to claim the benefit and protection under Section 25-F of the Act and the onus lies heavily upon him for this purpose. In view of the afore-discussed facts and circumstances, it is explicit that the workman has failed to discharge the above-said burden Reliance can be placed upon the case titled as **Range Forest Officer versus S.T.Hadimani, 2002(3) SCC, 25,** wherein it has been held that "mere filing of affidavit by the workman, being only his own statement*

in his favour, cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year". Similar views were taken by Hon'ble Supreme Court of India in case titled as State of Haryana versus Ramesh Kumar 2009(2) RSJ wherein it has been held that "termination of continuous service-burden of proof-it lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment-it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of employer." Similar views were also taken in case titled as Essen Deinki V. Rajiv Kumar 2002(4) SCT 900 (SC); AIR 2003 S.C.38 and Rajasthan State Ganganagar S.Mills Ltd. V. State of Rajasthan and another, 2004(4) SCT 214 (SC); 2004(III) LLR 832 (S.C.); Municipal Corporation Faridabad Vs. Siri Niwas, (2004)8 SCC 195 and M.P.Electricity Board Vs. Hariram, (2004)8 S.C.C.246."

It is evident from the aforesaid finding that petitioner has not worked from 10.03.2013 to 22.01.2014. He has also not produced any material to show that he has worked for 240 days. Thus, petitioner has not made out a case so as to interfere with the award passed by the labour court dated 10.07.2017 (Annexure P-3). Accordingly, CWP stands dismissed.

01.05.2018

pooja saini

Whether speaking/reasons

Whether Reportable:

**(P.B.BAJANTHRI)
JUDGE**

Yes/No

Yes/No