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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19114-2016

Date of Decision : Sept. 18, 2018

Ramesh Kumar

.... Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. S.K.Vashisht, DAG, Haryana
for respondent No.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 quashing the impugned award dated 21.04.2016 (Annexure P/6) passed by Industrial Tribunal-cum-Labour Court, Panipat (for short, "learned Tribunal") whereby the reference was decided against the workman.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner was appointed as Mali/Chowkidar with the Management on 1.5.1995 and he worked till 31.03.1997. As per the petitioner, his services were dispensed with on the basis of oral order without issuance of notice or payment of any retrenchment compensation.

3. Industrial dispute was raised by the workman and reference

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was not made by the State Government. Thereafter, the petitioner approached this Court by way of filing CWP-12585-2005 wherein directions were issued to the Appropriate Government for making reference of his dispute and on that basis, reference was made. However, learned Tribunal after considering the material and evidence available on the file, decided the reference against the workman vide impugned award, which has now been challenged by the petitioner in this writ petition.

4. Learned counsel for the petitioner contended that learned Tribunal has not considered the matter in its entirety. The petitioner-workman had led the evidence that he served the Management from 1.5.1995 to 31.3.1997 and his services were dispensed with without issuance of any notice or payment of retrenchment compensation and as such, his period of employment is more than 240 days of continuous service and the petitioner is thus, entitled to reinstatement with continuity of service and back wages.

5. The Management had led the evidence by way of statement (Annexure P/5) of Shamsheer Singh, SDE, Public Health Division as MW-1 and the witness had admitted in so many words in the cross-examination that the applicant had summoned his attendance register and muster roll for the period from 1.5.1995 to 31.3.1997 and the claim of the workman that he had worked for more than 240 days in a calendar year is correct. He has further admitted that the work of Mali-cum-Chowkidar was still available. The Management witness denied the fact that the Management had not "knowingly not produced attendance record of the applicant from December, 1995 to 31.3.1997 before the Hon`ble Court."

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6. Learned State counsel while arguing on this point, contended that learned Tribunal has rightly held that the workman had not completed 240 days, rather he had worked only for 184 days and as such, the petitioner is not entitled to reinstatement with continuity of service and back wages. More so, the demand notice was issued by the workman in this case after a period of three years i.e., on 3.11.2003. Reliance was placed upon the decision of Hon`ble Supreme Court in **Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another, (2014)7 SCC 190.** Reliance was also placed upon the Hon`ble Full Bench judgment of this Court in **Municipal Council, Dina Nagar, Tehsil and Distt. Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (1) PLR 465,** wherein Hon`ble Full Bench was of the view that the workman, solely on the strength of having completed 240 days would not per se be entitled for reinstatement and the Court has to consider all the attending facts and circumstances of the case.

7.. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the facts that the petitioner herein was appointed as Mali-cum-Chowkidar by the Management and the workman has claimed his period of employment from 1.5.1995 till 31.3.1997. The point at issue for consideration before learned Tribunal and before this Court is whether the petitioner-workman had completed 240 days in a calendar year to seek his legal right of issuance of notice or retrenchment compensation at the time of termination of his services. The Tribunal

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concluded that the petitioner-workman had not completed 240 days of continuous service and as such, he was not entitled to reinstatement and continuity of service. Accordingly, the reference was decided against the workman. However, learned Tribunal completely ignored the evidence adduced by the Management in this case wherein, the claim of the workman had been admitted by Shamsheer Singh, SDE, Public Health Division (MW-1) who was the only witness examined by the Management. The witness (MW-1) has admitted in so many words in the cross-examination that the workman had completed more than 240 days in a calendar year as continuous service. He has further admitted that the workman had summoned his attendance register and muster roll for the period from 1.5.1995 to 31.3.1997 but the same were not produced despite being available with the Management. That being the factual position and material available on the file, there was no justified grounds for learned Tribunal to record the finding contrary to that. Nothing was required to be proved by the workman, if the only witness examined by the Management admits the claim of the workman in toto. More so, the Management has not produced the relevant record, i.e., attendance register and muster roll though the said record was summoned by the workman before learned Tribunal and as such adverse inference is to be drawn against the Management. As per view taken by Hon`ble Supreme Court in **Gopal Krishanji Ketkar Vs. Mohamed Haji Latif and others,** AIR 1968 SC 1413, the burden of proving the fact was on the Management as the party which possessed the best evidence. Similar view was taken by Hon`ble Division Bench of this Court in **Bal Kishan Vs.**

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Presiding Officer, 1996(3) SCT 548.

8. Learned Tribunal has recorded the findings, which are contrary to the most relevant and admissible evidence available on the file by way of statement of Shamsher Singh, SDE, Public Health Division, MW-1 and if his statement is taken into consideration, workman had worked for more than 240 days in a calendar year with the Management and his services have been terminated without payment of retrenchment compensation and following the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 and the petitioner is entitled to be reinstated with continuity of service.

9. Resultantly, the present writ petition stands allowed and the impugned award dated 21.04.2016 (Annexure P/6) passed by Industrial Tribunal-cum-Labour Court, Panipat is set-aside. Petitioner-workman is ordered to be reinstated in service. However, taking into consideration the fact that the petitioner-workman had issued the demand notice on 3.11.2003, he is held entitled to continuity of service and back wages from the date of issuance of demand notice, i.e., 3.11.2003.

(SHEKHER DHAWAN)
JUDGE

September 18, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes