

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 19465 of 2016

Date of Decision: 2.08.2018

Subhash

... Petitioner(s)

Versus

The Presiding Officer, Labour Court, Ambala and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Jagram Singh Cooner, Advocate
for the petitioner(s).

Mr. Sunil Kumar Vashisth, Deputy Advocate
General, Haryana for respondents No.2 to 4.

Shekher Dhawan, J.

Present writ petition is for quashing of the impugned award dated 26.10.2015 (Annexure P1) pronounced by the learned Labour Court, Ambala on the ground that the same is contrary to the material available on file and as such the same is wrong, illegal and against the principles of natural justice.

Relevant facts for the purpose of decision of the writ petition that petitioner-workman allegedly joined the respondent-management as Labourer on daily wages in the year 2000 and continued to serve as such till 16.11.2013 when his services were arbitrarily terminated in violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Petitioner raised industrial dispute and on that basis, reference

was made to the learned Court below.

The management, in this case, had taken the plea that petitioner was not appointed by them and there was no relationship of employer and employee. From 16.06.2005 onwards, the respondent-management adopted contract system to carry out different forestry operations instead of maintaining muster rolls system and the work was being executed through the contractor. However, muster rolls for the period from 1988-89 and 2008-09 were weeded out after constituting a committee as per the procedure laid down in Haryana Forest Manual vide office order No. 30 dated 20.06.2012.

The management took the plea that petitioner was not entitled to be continued in service as he was not covered under the definition of “workman”; there was no relationship of employer and employee and the claim of petitioner was liable to be dismissed.

On these facts, the learned Court below, after recording the evidence and appreciation thereof, pronounced the award against the workman.

While assailing the impugned award, pronounced by the learned Court below, learned counsel for the petitioner-workman contended that the learned Labour Court has completely ignored the basic facts that petitioner had led sufficient evidence including his statement on oath that he served the management from the year 2000 to 16.11.2013 and his services were terminated without payment of any retrenchment compensation. His junior workers were retained by the management. His name figured in the seniority list of the department and to rebut the evidence led by the workman, there was no evidence from the respondents' side as the management had come

with the plea that record was not available with them. So, the impugned award be set aside and petitioner be reinstated with continuity of service and back wages.

While arguing on this point, learned counsel for respondents No. 2 to 4 contended that in the present case, petitioner was never appointed as workman. No appointment letter was issued to him, rather from 16.06.2005 onwards, respondent-management was carrying on the job of forestry through the contractor. There was absolutely no material available on the file to show that petitioner was appointed by the management and his services were terminated. The seniority list, as relied upon by the petitioner, was not prepared by the management, rather the same was prepared by the union, which does not carry any value and at the same time, it does not create any right for him to seek retrenchment compensation. The record was weeded out as per the policy of Government of Haryana as the same was oldest record and the writ petition is liable to be dismissed.

Having considered the submissions made by learned counsel for both the parties and appraisal of the record of the case, this Court is of the considered view that petitioner had raised industrial dispute on the ground that he was appointed in the year 2000, but the petitioner has failed to produce any document in support of his contention that he was issued any appointment letter nor any pay slip or attendance record has been produced by him. The learned Court below has rightly returned the finding that primarily it is the duty of the workman to establish and produce some material before the Court that petitioner was in fact appointed by the management. But petitioner has miserably failed to do that. In ***Range Forest***

Officer v. S.T.Hadimani (2002) 3 SCC 35; Municipal Corporation, Faridabad v. Siri Niwas (2004) 8 SCC 195; M.P.Electricity Board v. Hariram (2004) 8 SCC 246; Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan & Another (2004) SCC 161; Surendra Nagar District Panchayat and Another v. Jethabhai Pitamberbhai (2005) 8 SCC 450; and R.M.Yellati v. Assistant Executive Engineer (2006) 1 SCC 106, the Hon'ble Apex Court held that burden to prove that the workman had worked for 240 days is entirely upon him.

As regard to non-production of record by the management, there were two different reasons, firstly, the relationship of employer and employee has been completely denied by the management and secondly, the record was relating to the period between 1988-89 and 2008-09 and the same was weeded out as per the policy of Government of Haryana. At any rate, the petitioner workman has not been able to produce any evidence on file to establish his employment with the management. The alleged seniority list, relied upon by the petitioner, has been rightly discarded by the learned Court below as the same was prepared by the union and not by the management. To the contrary, in the two seniority lists dated 20.08.2007 (Ex.W2 & Ex.W3), the name of petitioner does not find mention. Petitioner has relied upon his own statement and statements of his co-workers. In his cross-examination, the petitioner himself had admitted that he left the job in the year 2013. If petitioner himself had left the job in the year 2013, then there remains no question of termination of his service by the management.

In view of above, learned Court below has rightly recorded the findings and pronounced the award on the basis of material and evidence

available on the file and correct legal preposition. Thus, present petition is without any merit and same stands dismissed.

(Shekher Dhawan)
Judge

August 2, 2018
“DK”

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No