

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP No.20619 of 2016 (O&M)****Date of Decision: 05.12.2018**

Central Institute of Research on Buffaloes, Hisar & another

...Petitioners

Vs.

Darshan Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Naveen Chopra, Advocate, for the petitioner.

Mr. Vivek Sharma, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J. (ORAL)

It appears that by oversight the Presiding Officer, Central Government Industrial Tribunal -cum- Labour Court-II, Chandigarh has applied the scheme called "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Government of India, 1993 promulgated for the Department of Telecommunications, Government of India to the present Department under which the Central Institute for Research on Buffaloes, Nabha falls. The Institute is a unit of the Indian Council for Agricultural Research functioning under the aegis of the Ministry of Agriculture, Government of India.

There is a separate scheme framed by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and

Training) called “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993” which specifically provides in paragraph 3 thereof that this scheme shall not be applicable to casual workers in Railways, Department of Telecommunications and Department of Posts who already have their own schemes. This error has been repeated in the part which fell for relief to Regulations 8 & 9 reproduced in the Award (pp.98 of the paper book) which also relate to the Department of Telecommunications. The mistake is apparent that while referring to the scheme by oversight, the citation was reproduced from the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989. What has been reproduced in the award is extract from 1989 scheme i.e. the Department of Telecommunications scheme, whereas in the scheme under the Ministry of Agriculture, the provision is Regulation 7, which provides that ‘despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing’.

Mr. Sharma says that the safeguard of notice was not provided to the workman. The Labour Court in the impugned Award has directed that the Management would pass an appropriate order as required under Regulation 9 within one year of publication of the Award failing which the workman would be entitled to wages from the date of award subject to his eligibility regarding age etc.

I have no doubt that reference to Regulation 9 was wrong since Regulation 7 of the DOPT Scheme, 1993 applied.

The question is what is to be made of this Award which per se is built on weak foundation. One option would be to set aside the award and

leave parties to remand proceedings, so that the appropriate provisions can be noticed by the Labour Court and proper findings returned. However, I am not inclined to adopt this course having become acquainted with the facts of the case on hearing counsel at length.

The respondent was engaged as a casual labourer on 01.01.1998. He was granted temporary status w.e.f. 01.09.1993 vide order dated 01.02.1995. According to the workman, his services were terminated on 12.08.1997, whereas according to the management, the workman did not perform his duty regularly and as many as 13 warning letters were issued to him up to November, 1996 and he ultimately abandoned the duty w.e.f. 11.08.1997. He approached the Director, CIRB, Hisar by his representation dated 26.11.1997 making false allegations and the authority issued an order on 27.11.1995 asking the workman to join duty on 30.11.1997. That was the last they saw of the workman.

Concededly, the workman served a demand notice in the year 2005 i.e. after lapse of 8 years. The reference was received in the Tribunal on 28.04.2008 and the award was passed on 18.11.2015. The respondent has nothing to offer as to what prevented him from raising a dispute within a reasonable time from the date when he last worked and in the absence of a satisfactory explanation, it can safely be assumed that the workman abandoned service and 8 years is sufficiently long lapse of time for the presumption to be disregarded. He surrendered his rights to remedy both civil and industrial. Inordinate delay in raising a dispute is an accepted reason to refuse answering a reference in favour of a workman although the provisions of Article 137 of the Schedule to the Limitation Act, 1963 do not

apply to Section 10 (1) (c) of the Act. Besides, delay is one thing and abandonment another operating differently.

As regards abandonment, it is well settled that in such a case, the provisions of Section 25-F of the Industrial Disputes Act, 1947 have not to be adhered to because workman's whereabouts are not known. In these circumstances the management was not even obliged to hold an inquiry. Absence may be a misconduct in the beginning, but if the duration is very long, then the inference is abandonment of service with no wish or will to return. In any case, the workman is under 13 warning letters and the management also says that he used to put political pressure on officers albeit while working as a Beldar looking after buffaloes.

The Labour Court has failed to draw its attention to the plea of abandonment set up by the management as a defence to the reference and to that extent the Labour Court award is gravely flawed. There are errors apparent on the face of record warranting interference.

Accordingly, this petition is allowed. The Award is quashed. The claim of the workman is set aside by quashing the reference order. The award will be treated as 'Nil'.

05.12.2018
Shabha/Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned : *Yes*

Whether reportable : *No*