

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

Date of decision: 12.10.2018

CWP No.1843 of 2017

Balkar Singh ...Petitioner

Vs.

The Presiding Officer, Labour Court, Ambala & others ...Respondents

CWP No.1866 of 2017

Ravi Kant ...Petitioner

Vs.

The Presiding Officer, Labour Court, Ambala & others ...Respondents

CWP No.1939 of 2017

Gurmail Singh ...Petitioner

Vs.

The Presiding Officer, Labour Court, Ambala & others ...Respondents

CWP No.4734 of 2017

Sucha Singh ...Petitioner

Vs.

The Presiding Officer, Labour Court, Ambala & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.S.Cooner, Advocate, for the petitioner(s).

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

This order will dispose of the aforementioned four writ petitions, as the cause they espouse and the factual and legal issues involved

CWP No.1843 of 2017;
CWP No.1866 of 2017;
CWP No.1939 of 2017 and
CWP No.4734 of 2017

is common and identical and, therefore, they can conveniently be decided by a single order. However, for a facility of reference, the facts are picked up from CWP No.1843 of 2017.

Government of India implemented a scheme under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) for carrying out seasonal work of plantation under the purview of the Forest Department, Haryana. The scheme remained in force for the period 02.08.2007 till 18.11.2010. The scheme guarantees employment of only 100 days in a financial year to every household falling in the rural areas. The scheme was seasonal in nature with the workman were called as and when required.

The burden of proof of completing 240 days in a year was on the workmen to discharge. Apart from stepping into the witness-box to make their oral depositions, the workmen failed to produce any evidence of continuous employment in terms of Section 25-B of the Industrial Disputes Act, 1947 (for short 'the Act'). For instance, Balkar Singh – petitioner in CWP No.1843 of 2017 worked for only 120 days in the year 2008 and 171 days in the year 2009 for which work done payments were made directly in the bank account of the workmen. The muster rolls were maintained as per Government of Haryana letter dated 06.07.2000 only under the MGNREGA scheme. However, the record for the period was damaged in a flood. In this regard, DDR No.17 dated 03.08.2010 was lodged in Police Station Baldev Nagar, Ambala City by the department.

In CWP Nos.1843 of 2017, 1866 of 2017 & 4734 of 2017, the dispute was raised as to termination by serving separate demand notice/s dated 25.06.2013, while in CWP No.1939 of 2017, the dispute was raised by

CWP No.1843 of 2017;
CWP No.1866 of 2017;
CWP No.1939 of 2017 and
CWP No.4734 of 2017

serving demand notice dated 04.08.2018. The dispute/s were referred for adjudication to the Labour Court for adjudication in the year 2014 vide different industrial references, which have all been decided by the learned Labour Court by identical awards, which are impugned in the petitions.

The authorized representative of the workmen has argued that adverse inference should be drawn in the absence of record. However, the learned Labour Court refused to draw such inference while relying on the judgments in Municipal Corporation, Faridabad Vs. Siri Niwas, (2004) 8 SCC 195; M.P.Electricity Board Vs. Hariram, (2004) 8 SCC 246 and Manager, Reserve Bank of India, Bangalore Vs. S. Mani, 2005 (2) SCT 404, wherein the Supreme Court held that only because some documents have not been produced by the management, an adverse inference could not be readily drawn against it. The burden of proof was on the workmen to show that they had actually worked for 240 days in the preceding twelve months of the calendar year from the date of termination to satisfy the tests of jurisdiction. They have been unable to prove their cases by leading best evidence before the learned Labour Court, which has answered the references against the workmen in these four cases vide separate awards dated 30.07.2015 in CWP Nos.1843 of 2017, 1866 of 2017 & 4734 of 2017 as well as dated 04.08.2015 in CWP No.1939 of 2017.

Moreover, there was a delay of 3 years in raising the dispute counted from the day the scheme in the Forest Department in the area in question was discontinued. The statements of the workmen that they have joined services on 01.03.2005 and their services were terminated on 01.01.2013 are bald statements which are not substantiated by proof.

CWP No.1843 of 2017;
CWP No.1866 of 2017;
CWP No.1939 of 2017 and
CWP No.4734 of 2017

If a person claiming to be a workman under the Act has not worked for 240 days during the period of engagement as per Section 25-B of the Act he has not developed industrial rights and, therefore, the question of compliance of Section 25-F of the Act does not arise.

Consequently, I find no legal infirmity or error apparent in the Awards rendered by the learned Labour Court warranting interference on findings of fact properly deduced from the available materials on record after appreciating them and would as a result dismiss all the petitions as devoid of merit.

12.10.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>