

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.8246 of 2014 (O&M)
Date of Decision: 13.11.2018**

Haryana State Market Committee
Tarori

... Petitioner

Versus

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

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Parveen Chauhan, Advocate,
for the petitioner.

Mr. I.S. Pabla, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. The legality and justification of the termination of services of the respondent-workman by the petitioning management was sent for trial registered before the Labour Court, Panipat in Ref. No.92 of 2006. The Presiding Officer has made an award on February 26, 2013 in favour of the workman. The Labour Court on the evidence presented by the parties has set aside the termination as illegal and granted reinstatement with continuity of service with 50% back wages from the date of demand notice i.e. August 09, 2005.

2. The facts which are not disputed are that the workman was employed on daily wages as Gateman to stand at Gate No.2 of the New Grain Market Tarori. Later on, he served as a Cattle Scarer. The period of service claimed by the workman was from September 12, 2002 to December

01, 2004. The procedural safeguards of month's notice, or pay in lieu of notice and payment of retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947 ("1947 Act") were not met by the management. Management claimed that the workman was engaged on part time basis as seasonal staff. He worked from September 12, 2002 to November 11, 2002 for 60 days; then from April 16, 2003 to June 16, 2003 for 61 days and lastly from October 09, 2003 to December 07, 2003 for another 60 days. After expiry of the stipulated period of 60 days his services stood terminated automatically. The management asserted that workman had not completed 240 days of service during the preceding calendar year and therefore the labour court had not acquired jurisdiction to enter the dispute.

3. On the other hand, the workman asserted that he had worked continuously during the period claimed by him and for 13 hours a day. The workman asserted that to claim wages he was asked to sign in the name of one Hazara Singh s/o Chattar Singh and different names were used to bring him salary to deprive him of evidence of continuous service. He alleged there was falsification of record. That apart other workmen were appointed in his place later whose names have been mentioned in the demand notice and in the examination in chief of the workman. There was thus violation of Section 25-H of the 1947 Act since option was not offered to him to join service when it was being offered to someone else for the same post. He also claimed a violation of the provisions of Section 25-G of the 1947 Act.

4. The dispute as to period of service and completion of 240 days as required by Section 25-B of the 1947 Act became a moot point of the

discussion of the case as these were jurisdictional issues on which the maintainability of the reference depended. The workman appeared as his own witness WW-1 and submitted his affidavit Ex.WW1/A supporting the version in his demand notice and pleaded in the statement of claim asserting his industrial rights which were violated by the management in breach of law. His name was registered with the Employment Exchange, Nilokheri on March 16, 2001 with his name sponsored to the petitioner. He not only worked as Gateman but at other places doing odd jobs as well assigned to him.

5. The Secretary-cum-Executive Officer, Market Committee, Ajay Singh appeared as a management witness at the trial. He supported the version in the written statement and deposed on the basis of documents Ex.MW1/1 (p.1-7), MW1/2 (p.1-5) and Ex.MW1/3 (p.1-5) that the workman had not completed continuous service of 240 days with the respondent. Therefore, he is not entitled to the protection of Section 25-F of the 1947 Act. He stated that workman was engaged by the management on part-time basis. He had not completed 240 days in any year of service. Ajay Singh stated that workman was appointed on a sanctioned post, a fact mentioned in para.2 of the affidavit. He stated that the post occupied by the workman was meant for paddy and wheat season which are totally temporary posts. MW-1 deposed in cross-examination that workman was engaged for specific work for specified period and was appointed on September 12, 2002 and worked up to December 07, 2003. He admitted that in case of temporary employees all the record related to termination and wages is to be maintained by the management. He admitted that copies of

the aforesaid record were not supplied to the employees. He feigned ignorance of the names of Dharmender, Ashwani, Vinod, Krishan and Surender who were said to be employed after termination of service of the respondent-workman. He could not effectively rebut the assertion of the respondent-workman regarding length of period of service by producing record to the contrary.

6. The Labour Court has held that party in possession of best evidence should produce it and if it is withheld the Court can draw an adverse inference against the opposite party notwithstanding that onus of proof does not lie on it. The Court referred to judgments in support of this proposition which need not be dealt with in any detail. Non-production of record of attendance that workman was on duty and remained in continuous service of the management would attract an inference against the management. The Labour Court read the evidence and concluded that the workman was engaged on the post of Cattle Scarer duly sanctioned in the budget for the year 2002-2003 and 2003-2004 under the head of seasonal staff. MW-1 had stated that workman had worked from September 12, 2002 to December 07, 2003 with breaks. These breaks were designed to deprive the workman of his industrial rights and this was dubbed by the Labour Court as unfair labour practice with no effective rebuttal to this jurisdictional issue. The management has failed before the Labour Court that termination was not retrenchment.

7. I have heard the learned counsel for the parties.

8. I have no doubt that the finding of fact recorded by the Labour Court regarding completion of 240 days of service during the preceding 12

calendar months from the date of termination is not open to be disturbed by substituting one view by the other when taken after appreciating the evidence on record.

9. I have, therefore, no reason to interfere with the award. The award may not be very articulate but the conclusion on the evidence is plausible and possible.

10. As a result, this petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

13.11.2018
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Whether speaking/reasoned	Yes
Whether reportable	No