

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

CWP No.551 of 2018 (O&M)
Date of Decision:26.11.2018

Baljinder Singh

... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Amritsar & another

... Respondents

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

Present: None.

RAJIV NARAIN RAINA, J. (Oral)

1. The challenge in this petition is to the award of the learned Industrial Tribunal, Amritsar declining the reference.
2. Today no one appears on behalf of the petitioner nor is a pass over sought. On the first date of appearance, also no one appeared for the petitioner, despite case being called twice. Learned Single Judge observed in the order dated January 15, 2018 that the petitioner has to satisfy the Court relating to number of years of service rendered by him while producing necessary material “since labour court has passed adverse order” in para. 15 of the impugned award dated October 3, 2017. Paragraph 15 of the impugned award reads as follows:-

“15. Onus was upon workman to prove that he has worked for eleven years with management continuously. The workman has tendered account slip Ex.W6 of 17.1.2000, another account slip Ex.W7 of 18.1.2000, another account slip Ex.W8 of

8.5.2000 and one challan Ex.W9. From all these three account slips, it is not proved that workman has worked continuously for 240 days in a year or relevant years at a stretch. The workman has tendered his affidavit Ex.WW1, in which he has deposed as per his claim. It is settled provision of law that onus was upon workman to prove that he has worked continuously for 240 days in a year. There is document Ex.M2 on the file in which the workman was an accused under Section 304-A of Indian Penal Code and he was convicted by learned Addl. Chief Judicial Magistrate, Gurdaspur on 17.9.2007 and he was sentenced to undergo rigorous imprisonment for one year. The workman by driving bus of management has killed the person in accident and FIR was lodged at Police Station Dhariwal on 27.3.2004. There is copy of another judgment Ex. M3 on the file, in which workman was convicted by the then learned Addl. Chief Judicial Magistrate, Gurdaspur on 23.1.2006 in FIR No.71 of 29.4.2001 of P.S.Dhariwal and he was sentenced to undergo RI for one and half years. The workman filed an appeal against this judgment and his appeal was dismissed by learned Addl. Sessions Judge (Adhoc), Fast Track Court, Gurdaspur on 3.7.2010. Against judgment Ex.M2, workman also filed an appeal and his appeal was also dismissed by learned Addl. Sessions Judge, fast Track Court, Gurdaspur on 8.5.2012 vide judgment Ex. M4. So, it is clear that workman committed two accidents and he was convicted in both of them and his appeals were also dismissed. Workman has failed to prove that he was worked continuously for 240 days in a preceding year before filing this reference. Onus was upon workman to prove this fact and his onus can never be shifted upon management. As such, it is proved that

workman has left the job of management of his own and he is not liable to be reinstated. Accordingly, reference is answered in negative and issues no.1 and 2 are held in favour of management and against workman.”

3. On February 27, 2018 counsel for the petitioner appeared at the hearing but without complying with the previous order. The matter was listed for compliance on April 4, 2018. None appeared on the next date. On February 12, 2018, request for adjournment was made by the learned counsel for the petitioner and the matter was adjourned for August 17, 2018. On August 17, 2018, Members of the Bar Association had suspended work which necessitated and adjournment. However, the application previously filed with documents Annex. P-5 to P-9 with request to take them on record was allowed and these documents were accepted on record albeit in the absence of counsel for the petitioner. On September 10, 2018, again no one appeared on behalf of the petitioner.

4. Left with no option I have perused the paper-book and the documents (Annex. P-5 to P-9). Annex. P-5 is a Conductor Way-Bill of the Khera Bus Service (Regd.), Amritsar dated 8.1.2000 of Bus No.9991; Annex. P-6 is an account slip of Amritsar Bathinda Transport Coop. Society Ltd., Amritsar dated January 18, 2000, but of the same bus registration number; Annex. P-7 is an application for obtaining superdari of Bus No.9991 of Amritsar Bathinda Transport Co. in case State vs. Baljinder Singh in FIR No.71/2001 dated April 29, 2001 P.S. Dhariwal under Sections 304A, 279, 427 IPC registered against the petitioner for causing death by negligence in an accident caused by rash and negligent driving as the driver of the bus. The bus

was taken on superdari by one Kanwarjit Singh, Traffic Manager of Amritsar Bathinda Transport, Amritsar as power of attorney holder of the owner of the Bus. The application is dated Nil. Annex. P-8 is part of judicial order in Crl.Case No.61/1 of 2001 decided on January 23, 2006 while Annex. P-9 is a letter issued to “the District Officer Sahib, Amritsar” on the subject of verification of licence of driver Baljinder Singh, the present petitioner. This letter is written by the Amritsar Bathinda Transport Cooperative Society Ltd. asking for verification of Licence No.18115/05 belonging to the petitioner and asking whether it is available on the office record.

5. These documents do not either independently or cumulatively even remotely establish that the petitioner had put in 240 days of continuous service in the preceding 12 calendar months counted backwards from the date when the petitioner last worked with the management. It is also not mentioned in the application whether these documents form part of the evidence exhibited as evidence on the record of the learned Industrial Tribunal. Even if they do exist, I still have no reason to interfere in the findings of fact recorded by the learned Industrial Tribunal, Amritsar warranting any interference in exercise of jurisdiction under Articles 226/227 of the Constitution of India with the learned Tribunal holding after appreciating the evidence that the petitioner had failed to prove that had worked for and during the requisite months as per provisions of section 25B of the Industrial Disputes Act, 1947 to confer industrial rights on him. If this jurisdictional fact was not proved, the Tribunal did not commit any mistake in declining the reference.

6. For the reasons stated above in the light of the findings of fact recorded by the learned Tribunal in para. 15 of the impugned award, this petition is held to be devoid of merit and consequently is ordered to stand dismissed.

7. A copy of this order be sent to the petitioner by the Registry.

26.11.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No