

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5769-2018 (O&M)
Date of Decision:-03.05.2018.

Radhey Shyam

.....Petitioner

Versus

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

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ramesh Malik, Advocate for the petitioner.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has challenged the award
passed by the Labour Court dated 27.09.2017 (Annexure P-4).

2.) Labour Court after considering factual aspect, it has recorded as
follows:-

*“11. After hearing the arguments and after
going through the oral and documentary evidence led by
the parties, I have come to the following conclusion: In
this case, the contention of the workman is that he had
worked with respondent during the period from 1.5.02 to
31.10.09 and had completed the continuous service of
more than 240 days. But his services were illegally
terminated by respondent on 1.11.09 without giving him
any notice or pay in lieu of notice and retrenchment
compensation. As per the case of the workman, the date
of joining of workman is 1.5.02. He has testified this
fact on oath while appearing as WW-1. On the other*

hand, it is the case of the management that the workman joined service with the respondent on 1.5.06. This fact is reiterated by Mr. Vijay Kumar Assistant HR Manager as MW2 during his cross-examination that the workman was appointed with the respondent company on 0.5.06. Ex. MW1/1 is the copy of appointment letter, thereby, showing the date of appointment as 1.5.06. Hence, it is held that the date of appointment of workman with the respondent was 1.5.06 and not 1.5.02. The contention of the workman is that he had worked with the respondent upto 31.10.09 but this fact is denied by the respondent. The solitary witness of management Vijay Kumar who appeared as MW2 has also state devent during his cross-examination that the workman had worked with the respondent upto 31.8.08. The respondent produced copy of attendance register for the month of August and September 2008. The attendance of the workman was marked in the month of August 2008 but in the month of September 2008, the workman was shown absent from service by the respondent. The workman produced monthwise wage slips with which Ex.WW1/1 to Ex.WW1/8 for the period from 4.12.07 to 4.8.08. The aforesaid documents prove that the workman had worked with the respondent upto 31.8.08 because the workman himself tendered wage slips upto August 2008. If the workman had worked with the respondent upto 31.10.09, he should have brought on record the wage slip upto 31.10.09. It is duly proved on record that the workman had worked with the respondent upto 31.8.08. Now considering this fact that workman was appointed by the respondent on 01.5.06 and was removed from service on 31.8.08 even then 240 days are not completed. The workman produced wage slips which is Ex.WW1/1 to Ex.WW1/8. In which, the working days of the

workman has been shown by the respondent. The workman had worked for 26 days in the month of December, 2007 which is Ex.WW1/1, for 26 days in the month of Jan. 2008 which is Ex.WW1/2, for 27 days in the month of Feb. 2008 which is Ex.WW1/3, for 25 days in the month of March 2008 which is Ex.WW1/4, for 26 days in the month of April 2008 which is Ex.WW1/5, for 26 days in the month of May 2008 which is Ex.WW1/6, for 27 days in the month of June 2008 which is Ex.WW1/7 and for 27 days in the month of August 2008. The total working days of the workman are 210 days only which is less than 240 days. A perusal of file shows that the initially onus to prove this issue was upon the workman but except his own sole, self-serving and oral depositions as WW 1 before this Court, the workman has not been able to lead any other cogent evidence on the file to prove the fulfillment of the pre-requisite of the completion of continuous service of 240 days by him as provided under Section 25-B of the Act. Thus, his afore-discussed testimony remains uncorroborated on the file. The workman has not led any cogent evidence/documents and has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he had completed the continuous service of more than 240 days in the last preceding 12 calendar months from the date of termination. He could have summoned the office record of the respondent regarding the attendance during the afore-said relevant period to prove the afore-said fact but he has neither summoned record from respondent despite the fact that the above-said record would have clinched the entire matter in dispute between the parties regarding his afore-said claim and could have been easily available to him and

he has failed to advance any explanation for non-summoning this record. It is well-settled that it is entirely for a workman to prove the fulfillment of the pre-requisite of completion of his continuous service of 240 days as an employee of the management as envisaged under Section 25-B of the Act, so as to claim the benefit and protection under Section 25-F of the Act and the onus lies heavily upon him for this purpose. In view of the afore-discussed facts and circumstances, it is explicit that the workman has failed to discharge the above-said burden. Reliance can be placed upon the case titled as **Range Forest Officer Versus S.T. Hadimani, 2002(3) SCC, 25** wherein it has been held that “**mere filing of affidavit by the workman, being only his own statement in his favour, cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year.**” Similar views were taken by Hon'ble Supreme Court of India in case titled as **State of Haryana Versus Ramesh Kumar 2009(2) RSJ** wherein it has been held that “**termination of continuous service-burden of proof – it lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment – it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of employer.**” Similar view were taken by Hon'ble Delhi High Court in case titled as **Vasudev Parsad Vs. Management M/s. Ashoka Gears & Anr. 2016 LLR 948** wherein it was held that “**the burden to prove is upon the workman that he performed duty continuously for 240 working days during the preceding 12 calendar months.**” Similar views were also taken in case titled as **Jaibir Vs. The**

Divisional Forest Officer 2016 LLR 364 (P&H); Essen Deinki Vs. Rajiv Kumar 2002(4) SCT 900 (SC); AIR 2003 S.C. 38 and Rajasthan State Ganganagar S. Mill Ltd., V. State of Rajasthan and another, 2004(4) SCT 214 (SC); 2004 (III) LLR 832 (S.C.); Municipal Corporation Faridabad Vs. Siri Niwas, (2004) 8 SCC 195 and M.P. Electricity Board Vs. Hariram, (2004)8 S.C.C. 246.”

In view of the aforesaid finding of the Labour Court, petitioner had not summoned the relevant records for the purpose of proving that he has continuously worked for 240 days before terminating his services. In view of these facts and circumstances, petitioner has not made out a case so as to interfere with the award passed by the Labour Court.

3.) Accordingly, petition stands dismissed.

**(P.B. BAJANTHRI)
JUDGE**

May 03, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.