

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA No. 367 of 2019 (O&M)

Date of Decision: 10.04.2019

Executive Engineer, Provincial Division, Haryana, PWD (B&R) Branch,
Jhajjar

-

.....Appellant

versus

Pardeep Kumar and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Sharad Aggarwal, Assistant Advocate General, Haryana,
for the appellant.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM No. 824-LPA of 2019

Heard. For the reasons mentioned in the application, delay of
65 days in re-filing the appeal is condoned. Application stands disposed of.

LPA No. 367 of 2019

This intra-court appeal filed by the State of Haryana under
Clause X of the Letters Patent is directed against the judgment and order
dated 03.10.2018 passed by the learned Single Judge dismissing the petition
challenging the award of the Labour Court made in favour of the
respondent-workman.

2. In brief, the facts required to be noticed for adjudication of the
controversy can be summarized as under:-

Respondent-workman was appointed as a Mate on 01.01.1991 on daily wages and his services were abruptly terminated on 30.12.2000 without assigning any reason. An industrial dispute was raised on the ground that the termination is bad in law as it is not preceded by the notice or payment of retrenchment compensation and thus was in violation of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947.

3. A reference was made to the Industrial Tribunal-cum-Labour Court. The appellant-State set up a plea before the Tribunal in defence that the workman was appointed on temporary basis on daily wages and left the job of his own and did not report on duty after 30.11.1991 and thus it was a case of abandonment of service. Another defence set up was that the workman has not completed 240 days in preceding calendar year. Both the defence set up by the appellant management before the Labour Court were negated for want of any evidence being brought on record to substantiate the same. A categorical finding in respect of the plea set up by the appellant with respect to abandonment of service has been returned that there was no material brought on record by the appellant herein that the respondent-workman had abandoned the job. Thus there was no iota of evidence available on record to substantiate the plea set up in defence.

4. In so far as the issue of having not completed 240 days continuous service by the employee is concerned, the Tribunal relying upon the statement of MW1 the SDO of the appellant employer who admitted in cross-examination that relevant record was not produced to establish the factum that there was any break in service. Since the record of employment was maintained by the appellant-employer and once the factum of employment was admitted, the onus was upon the appellant-management to

demonstrate by producing relevant record that the respondent-workman failed to satisfy the test of 240 days of continuous employment in the preceding calendar year. On this issue also the Industrial Tribunal has returned a finding that the employer management failed to discharge the onus.

5. Learned Single Judge after analyzing the record has affirmed the findings returned by the Industrial Tribunal which in effect are the findings of fact based on appraisal of material on record. During the course of arguments, learned Assistant Advocate General, Haryana failed to satisfy that the findings returned by the Industrial Tribunal-cum-Labour Court and affirmed by the learned Single Judge of this Court are either based on misreading of evidence or are vitiated for non-consideration of any material piece of evidence.

6. In view of the above, the learned Single Judge rightly dismissed the writ petition and we find no infirmity in the impugned judgment so as to interfere in the matter. The appeal being devoid of merits stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

10.04.2019

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√