

CWP No.18733 of 2013

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

**CWP No.18733 of 2013
Date of decision : 05.02.2019**

Union of India and others

...Petitioners

Vs.

The Central Government Industrial Tribunal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Pawan Kumar Longia, Advocate, for the petitioner.
Mr.Gagneshwar Walia, Advocate, for the respondent-
workman.

RAJIV NARAIN RAINA, J. (ORAL)

1. Not even an iota of clear and conclusive evidence was produced by the Management to prove its plea that the respondent Joginder Singh had not performed duties for the entire period i.e. 459 days, which period has been treated as extraordinary leave. The categorical stand of the petitioner before the Labour Court was that he had worked and was paid salary for six months, which Mr. Longia says was the period falling between the entire period of EOL. Only evidence led by the petitioner was Management's witness Tirlochan Singh. Nothing has come out from his statement in examination-in-chief and in the cross examination to say with any certainty that Joginder Singh had not worked beyond the period admitted by the Management. The Labour Court has examined the evidence on record and reached the conclusion that the claim of the workman is justified. The evidence clearly shows that the theory of long absence from

duty was a false stand of the management, with labour court returning findings on issue No.2. The Tribunal noticed the initial stand taken by the Management and in its amended written statement, stating that since the workman was absent from duty from October 1995, hence, nothing is payable to him and the entire amount due to the workman was re-claimed from October 1995 to January 1999. Joginder Singh's leave/absence period was regularised in January 1996 and the total period of 459 days of absence was treated as extraordinary leave for which recovery was ordered. MW Tirlochan Singh has failed to specify the period of absence in his deposition. The Tribunal noticed that only general statement had been made without substantiating the defence by him documentary evidence. The department seems to have woken up in January 1995, as deposed by Tirlochan Singh. The Tribunal recorded that when attendance register was being maintained properly then how did the authorities fail to notice the period of absence till 1999 and how he was paid salary till September 1995. Joginder Singh was compulsorily retired by order dated 8.1.1999 and thereafter his absence has been alleged from 1.1.1995 forgetting that they had paid salary up to September 1995. The Tribunal concluded that discrepancies go to show that attendance record of the workman maintained by the Management cannot be relied upon. The version of the Management that workman absented from duty from November 1994 taken in the subsequent reply/additional statement in 2011 after about 12 years of filing the initial reply to the claim statement in July 1999 was an afterthought.

2. Accordingly, the Tribunal found that the record maintained by the department is unreliable and the same does not speak authoritatively on the period of absence of the workman. If there are contradictions and

inconsistencies in the evidence, as pointed out by the Tribunal, I have no reason to differ with the opinion of the Tribunal on the evidence to take a different view. I find neither a palpable mistake committed by the Tribunal nor any perversity or material error apparent on the face of record and, therefore, this is not a fit case to intervene in the extraordinary and discretionary writ jurisdiction under Article 226 of the Constitution of India against the impugned order.

3. For what has been said before, I find no merit in this petition and it is dismissed. The amount due be paid to Joginder Singh within three months from the date of receipt of certified copy of this order by adjusting any payments already made. If the dues are not paid within the stipulated time, the amount in default will carry interest @ 9% p.a. till realization.

05.02.2019

Meenu/Vimal

**(RAJIV NARAIN RAINA)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No