

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

**CWP No.18684 of 2019 (O&M)
Date of decision: 20.11.2019**

Mahender.

....Petitioner

Versus

Presiding Officer Industrial Tribunal-cum-Labour
Court Panipat and others

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr.Vikas, Lochab, Advocate for the petitioner.

B.S. Walia, J.

CM No.15237 of 2019 in CWP No.18684 of 2019

For the reasons as are mentioned in the application, delay of 36 days in filing the application for restoration of the case is condoned.

CM stand disposed of.

CM No.15240 of 2019 in CWP No.18684 of 2019

For the reasons as are mentioned in the application, the same is allowed and the main case restored to its original number. On oral request of learned counsel, main case is taken up for hearing today itself.

Main case

1. Prayer in the writ petition is for the issuance of a writ of certiorari for quashing award Annexure P/1 dated 21.08.2017, for answering the reference in favour of the petitioner and for directing respondent No.2 to reinstate the petitioner in service with full back wages and continuity of service.

2. Learned Counsel contended that the petitioner (hereinafter referred to as the workman) was appointed as Mali by respondent No.2 on 01.01.2002 and worked continuously as such till 28.02.2005 where after his services were orally terminated w.e.f. 01.03.2005 in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and further, that the workman had rendered service under respondent No.2 continuously for 240 days in the preceding one year prior to his alleged retrenchment and in the circumstances, served demand notice dated 31.05.2014 claiming reinstatement with continuity of service and full back wages on account of violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') but the Industrial Tribunal cum Labour Court, Panipat (hereinafter referred to as the Tribunal) dismissed the reference without appreciating the evidence in the correct perspective .

3. I have considered the submissions of learned counsel. Stand of Respondent No. 2 before the Tribunal was of the reference being barred by the principle of res judicata as earlier workman had filed reference No.65/07 under Section 2A of the Act claiming having served under the respondent for the same period and of his termination being illegal but of said reference having been dismissed vide award dated 23.05.2012 as also of the workman having failed to substantiate having worked under respondent No.2 continuously for 240 days in the preceding one year prior to his alleged retrenchment, besides, the claim being time barred having been filed after nine years and three months from the alleged date of termination i.e. 01.03.2005.

4. That on the basis of evidence led by the parties, the Tribunal held that the workman had failed to prove having worked under respondent No.2 continuously for 240 days in the preceding one year prior to his alleged retrenchment, or of appointment of other workmen after his retrenchment, of having concealed earlier reference and award dated 23.05.2012 which was decided against him, of the reference being barred by the principle of res judicata and further that except for his own self serving oral deposition as WW-1, the workman had not lead any cogent evidence on the file to prove having worked under respondent No.2 continuously for 240 days in the preceding one year prior to his alleged retrenchment as provided for under Section 25-B of the Act.

5. The Tribunal relied upon the decision of Hon'ble the Supreme Court in **Range Forest Officer versus S.T. Hadimani, 2002 (3) SCC 25** to hold that mere filing of affidavit by the workman, being only his own statement in his favour could not be regarded as sufficient evidence for the Tribunal to come to the conclusion that he had, in fact, worked continuously for 240 days in the preceding one year prior to his alleged retrenchment. Reference was also made to the decision in **State of Haryana versus Ramesh Kumar 2009 (2) RSJ**. Relevant extract of the same is reproduced as under :

*“11. This Court again in **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan, 2004(4) SCT 214 : (2004(8) SCC 161), Municipal Corpn., Faridabad v. Siri Niwas, 2004(4) SCT 211 : (2004(8) SCC 195) and M.P. Electricity Board v. Hariram, 2004(4) SCT 482 : (2004(8) SCC 246)**, has reiterated the principle that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to*

adduce evidence apart from examining himself to prove the factum of his being in employment of the employer.”

6. It is settled law that burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment in terms of requirement under Section 25-B of the Act to claim the benefit and protection under Section 25-F of the Act. However, learned counsel has failed to refer to any evidence to substantiate the workman having served for the period claimed as also of having worked continuously for 240 days in the preceding one year prior to his alleged retrenchment nor has learned counsel denied that earlier the workman had filed reference No. 65/07 maintaining therein that he had worked under the respondent during same period and of the said reference having been dismissed vide award dated 23.05.2012. In the circumstances, it is not open to the workman to invoke the jurisdiction of the Tribunal subsequently in respect of same cause of action.

7. In the light of the position noted above, no ground exists warranting interference with the well reasoned award passed by the Industrial Tribunal, Panipat. The writ petition is bereft of merit and is accordingly dismissed in limine.

November 20, 2019
ps

(B.S. Walia)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No