

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

CWP No.7078 of 2018

Date of Decision:22.1.2019

Divisional Forest Officer Van Mandal Gohana Road, Sonapat

...Petitioner

Versus

Smt.Anil Devi and another

... Respondents

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

Present: Ms.Shruti Jain Goyal, DAG, Haryana
for the petitioner

RAJIV NARAIN RAINA, J.

1. I have heard learned counsel for the petitioner and perused the paper-book.

2. Divisional Forest Officer, Van Mandal, Gohana Road, Sonapat has challenged the award dated 14.3.2017 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat. The reference to the Labour Court was regarding the legality and validity of the termination of service of Smt. Anil Devi, who worked as Mali-cum-Beldar since 1995 till 13.12.2008 when she was retrenched without any notice or pay in lieu of notice and retrenchment compensation. Section 25F of the Industrial Disputes Act, 1947 (for short "the Act") became central point on which the case turned. In her oral testimony she deposed as per her pleaded version.

3. In sharp contrast, the stand of the department was that the Smt. Anil Devi never worked at any time on the post of Mali during the

basis from time to time, as per requirements of work as a Labourer. The department produced Sh. Raman, Deputy Range Forest Officer as MW-1 in whose testimony, there is a contradiction. On the one hand, he refuted that she worked as Mali, but at the same time, he admitted that she worked as daily wager from time to time. What difference that meant in intractable. In the written statement, the Management stated that the worker was never engaged by the Forest Department. There was no need of paying any retrenchment compensation because the Act did not apply. They had not violated any provisions of the Act i.e. Sections 25F, 25G and 25H.

4. The reason attributed to illegal retrenchment by the claimant was that having served for 13 years, she made had made a request to the Department to regularise her services in terms of State policies. At this, the respondent/Management got annoyed and terminated her services on 1.1.2009 without serving on her any notice or pay in lieu of notice and retrenchment compensation. The claimant had completed more than 240 days of service in the year preceding retrenchment as required by Section 25B and other provisions of the Act. She claimed reinstatement before the Labour Court. She did not claim regularisation nor was that dispute referred.

5. The solitary witness MW1 of the Management admitted in his cross-examination that work was taken from the worker by the Department through contractor i.e. Gram Van Samiti, Kakroi. The Labour Court read the defence statement of the Management in its written statement and found that this plea was not taken in the pleadings nor in the affidavit by way of examination-in-chief that Anil Devi had worked under

mentioned in the pleadings by the department. He admitted that the Range Forest Officer is the Secretary of the Gram Van Samiti. No witness was produced from the Gram Van Samiti to the effect that Anil Devi was his/their employee and not that of respondent. Accordingly, the plea set up by the Management was held not sustainable.

6. On failure of the Management to prove by legal evidence that Anil Devi was not workman, the onus shifted on the Management to prove that the applicant had not completed 240 days of service with them. The Management was unable to shrug off the employer-employee relationship. There was evidence of bills of the workers prepared by the Chairman, Van Samiti and those were passed by the Department. In this factual position, the Labour Court held that in the absence of production of relevant record of employment i.e. Attendance Register, Payment of Wages Register, copy of VFC license of Kakroi and salary slips, the conclusion was irresistible that there was direct relationship of employer and employee between the Forest Department and the Smt. Anil Devi. As a result, violation of Section 25-F of the Act was established on record and since there was no effective rebuttal on the strength of evidence of non-completion of 240 days of service in the preceding calendar year from the date of termination of service, both the jurisdictional issues were held in favour of Anil Devi and against the Management. Termination was declared illegal.

7. I have no reason to substitute the opinion of the Labour Court drawn from the evidence adduced on record by any other hypothesis in writ proceedings. Thus, there will be no occasion to differ with the view expressed by the Labour Court in its award dated 14.3.2017 after

continuity of service and 50% back-wages from the date of filing of demand notice i.e. 14.3.2011.

8. In view of the above discussion, I find no merit in this petition which is accordingly dismissed as it does not merit admission.

22.1.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No