

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

207

CIVIL WRIT PETITION NO.6785 OF 2010

DATE OF DECISION: JULY 17th, 2020

Surinder Singh alias Surinder Kumar

.....Petitioner

VERSUS

The Garrison Engineer-1, R&D, Chandigarh and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Puneet Jindal, Sr.Advocate with
Mr. Amandeep Singh, Advocate,
Amicus-curiae for the petitioner.

Ms. Ranjana Shahi, Advocate,
for Union of India.

AUGUSTINE GEORGE MASIH, J. (ORAL)

1. This writ petition has been filed by the workman, who alleges that he was selected and appointed as a Lift Operator/Technician in December 2001 in the office of the Garrison Engineer-1, R & D-respondent No.1. Initially, he was kept on probation for a period of one year and continued to work on the post till 25.05.2005 without any break in service. Thereafter, he was not allowed to enter the premises and was told orally that his services have been terminated. He was working with respondent No.1 regularly and his attendance was also marked in the office. His work and conduct was never adversely commented upon. He possesses the required qualifications and experience for the job. On completion of more than three years of service, he was entitled to regularization thereof but his services

have been terminated without issuing any notice or paying any compensation or passing any order on record. In fact, he was simply not allowed to enter the premises and, thus, not allowed to mark his attendance on 26.05.2005 onwards. He has placed on record a photo copy of the attendance register, showing his attendance from 24.01.2002 to 02.06.2004 (Annexure P-3). The alleged identity card issued to him has been placed on record as Annexure P-1, wherein the date of validity is mentioned upto 31.03.2005 (the document, on perusal mentions as “entry pass”). The original identity card (entry pass) is alleged to have been taken back by the respondent-Management under force and duress. The proof of depositing of said document with the security section on 26.05.2005 has been appended as Annexure P-4. Petitioner had made number of representations to respondent No.1 for allowing him to enter the premises and to continue on his job but without any success.

2. Faced with this situation, petitioner filed a complaint before the Assistant Labour Commissioner (Central), highlighting his grievance wherein he stated that his services have been terminated without issuing any order with effect from 26.05.2005. Neither any notice has been given to him prior to such termination nor any salary/payment, calculating compensation as mandated under the provisions of the Industrial Disputes Act, 1947 (for short, “the Act”) has been made to him. Persons junior to him have been retained in job and fresh appointments have also been made. Petitioner had completed 240 days in each calendar year prior to his termination and, thus, his termination was illegal.

3. After the conciliation proceedings failed, the matter was referred to the Central Labour Court for adjudication of the matter. The

reference, which was made to the Industrial Tribunal-cum-Labour Court, Chandigarh, for adjudication, reads as under:-

“Whether the action of the management of Garrison Engineer (R&D), Chandigarh in terminating the services of their workman Shri Surinder Singh w.e.f. 26.5.05 is legal and justified? If not, to what relief the said workman is entitled to?”

4. Petitioner submitted his claim statement, copy whereof has been appended as Annexure P-12, reply whereof was filed by respondent No.1 on 21.11.2006 (Annexure P-13), contesting the claim as put forth by the petitioner.

5. In the reply filed, the stand taken by the management was that the petitioner was not appointed by the management, rather different contractors were engaged to provide services, who had, in turn, employed workmen at different times for operation of lifts installed in the office of respondent No.1 and were paid by the contractors. No master and servant relationship existed between the management and the workman. No appointment or termination order was ever given to the workman by the management. The labourers/employees/workmen were appointed by the contractors engaged and the management had no role whatsoever in the same. There was no role of the management either in the appointment of the petitioner or his removal from the job. The dispute, if any, was between the petitioner and the contractor.

6. The Industrial Tribunal-cum-Labour Court proceeded to decide the reference by passing an award dated 19.02.2009 (Annexure P-11). On the basis of the evidence led by the parties, the Labour Court came to the

conclusion that the petitioner-workman was directly engaged by the management on daily wages basis as no document regarding the agreement entered into between respondent management and the contractor, who is alleged to have provided the services of the workman to the management, was produced. Failure of filing/adducing any evidence by the management on the issue of providing the services of the workman through contractor led to adverse inference having been drawn by the Labour Court, establishing the relationship of master and servant between the petitioner and the management. The Labour Court, however, in the absence of any evidence to the effect that the workman had been working with the respondents for 240 days or more than that in the preceding year from the date of his termination as also the admission on the part of the workman that he could not name any juniors, who were retained in service while his services were terminated or that fresh persons have been appointed in his place, the reference was answered against him. Accordingly, the present writ petition has been filed, challenging the award dated 19.02.2009 (Annexure P-11).

7. Mr.Puneet Jindal, Senior Advocate, appearing as amicus-curiae on behalf of the petitioner, submits that the Labour Court has gravely erred in coming to a conclusion that the petitioner has failed to lead evidence to establish he having completed 240 days in a calendar year. Referring to Annexure P-3, which is a photo copy of attendance register of the Lift Operators for the period from 24.01.2002 to 02.06.2004, he contends that the findings are not sustainable and are contrary to records. He further asserts that the identity card (Annexure P-1) and the deposit of the same vide receipt dated 26.05.2005 (Annexure P-4) clearly depicts that the petitioner had been serving with the respondents as Lift Man all through

without any break. Assertion has also been made that the petitioner could not produce the attendance sheets beyond the period, copies of which were supplied by the respondents, onus of which was upon the management to produce the same. Assertion has also been made by him that as per the award passed by the Labour Court, the relationship of master and servant between the petitioner and respondent No.1 stood established and, therefore, the onus was upon the respondents to produce the records, which they failed to do so. There is violation of the provisions of Section 25F of the Act, as it is admitted on the part of the respondents that neither any notice nor any compensation was paid to the petitioner by the respondents prior to termination of his services with effect from 26.05.2005. Non-issuance of the appointment letter by the respondents cannot be taken as a ground for denying the workman the benefit of provisions of the Act, when there is evidence on record to show that the workman had continued with the management for continuous period as is depicted above. He, thus, contends that the impugned award cannot sustain and deserves to be set-aside and reference needs to be answered in favour of the workman.

8. On the other hand, learned counsel for respondent No.1 submits that the award passed by the Labour Court is clear with regard to non-production of any record by the petitioner with regard to he having worked with the management for a period of 240 days in the preceding year from the date of his termination. She reiterates that the petitioner was not appointed by respondent No.1 but was engaged by the contractor, who had taken the work contract for supplying the persons for the work to be performed as per the tender submitted. She further contends that the petitioner had been engaged by different contractors who were assigned the

tender for supplying labour and employees for the work. Since the petitioner was not appointed by respondent No.1, there was no question of terminating his services. None of the persons have been named by the respondents who have been retained in service and were juniors to him, rather he has admitted in his cross-examination that Annexure P-1, which he alleges to be the identity card, was an entry pass issued to him temporarily so that he did not have any difficulty in entering the premises. For this assertion, she places reliance upon the cross-examination of the petitioner dated 14.08.2007 (Annexure P-20 colly). Assertion has also been made that the management did not maintain the attendance of the employees, who were appointed by the contractors. It was for the contractors to maintain the same as the payment of wages had to be made by them. There was no direct dealing of the management with the workmen as they were deputed by the contractor to perform a particular work, which they were performing. The petitioner was also performing the duties of Lift Operator in the same manner. She, thus, contends that the award as passed by the Industrial Tribunal-cum-Labour Court dated 19.02.2009 (Annexure P-11) being in accordance with law does not call for any interference.

9. I have considered the submissions made by counsel for the parties and with their assistance have gone through the pleadings as also the records of the Labour Court.

10. Perusal of the impugned award dated 19.02.2009 (Annexure P-11) would show that on the basis of the evidence, which has been produced on record by the petitioner and because of non-production of documents on behalf of respondent No.1, relating to agreement alleged to have been entered into between the respondent management with the contractor for

providing services of workmen to the management, the Court had come to the conclusion that the workman was directly engaged by the management on daily wage basis. Thus, the finding that there was a relationship of master and servant between the management and the workman, which was disputed by the respondent-management, could not be dislodged by the respondents even before this Court as there is no evidence/document produced on record, which would indicate that the petitioner was not directly appointed by the respondent-management, although it was asserted that his services were provided by different contractors, which were engaged by the management for doing so.

11. On the other hand, petitioner-workman could not dent the findings returned by the Labour Court that none of the persons junior to the petitioner had been retained in service while the services of the petitioner were terminated nor has any evidence come on record, which would indicate that any person had been engaged subsequent to the termination of the services of the petitioner by the respondent management either directly or through outsourcing. The findings have been based by the Labour Court on the cross-examination of the petitioner dated 24.08.2007 (Annexure P-20 colly), thus, cannot be faulted with. Thus, the provisions of Section 25-H of the Act cannot be said to have been violated by the respondent-management.

12. The only question now which needs to be addressed is with regard to the violation of Section 25-F of the Act for claiming the benefit by the petitioner under said provision of the statute. The primary requirement after the relationship of master and servant having been established is that the petitioner had served the respondents for a period of 240 days or more in

the preceding year prior to the date of termination.

13. Reliance has been placed by the petitioner upon the photo copy of the alleged attendance register of the Lift Operators relating to period from 24.01.2002 to 02.06.2004 (Annexure P-3). The said document has been denied by the respondent-management. A perusal of the said document would show that there is no signature of any authority of the management, which would authenticate the same. The alleged attendance register is not in a printed form. The petitioner has not made any effort for calling for the original records or putting the said document to the management or its witness to establish its authenticity. The said document does not indicate that it pertains to attendance of Lift Operators working on the establishment of the respondent management. The said document, therefore, cannot be said to be establishing the fact that the petitioner had been working with the respondent-management continuously from 24.01.2002 to 02.06.2004, as asserted.

14. In any case, according to the petitioner, his services were terminated on 26.05.2005, on which date he was not allowed to enter the premises or to mark his attendance. One preceding year from that date would be upto 25.05.2004. There is nothing on record, which would prove that the petitioner had worked with the respondent-management for the said period. No effort whatsoever has been made by the petitioner for production of the records for this period, which is the most crucial period to establish the factum as to whether the petitioner had completed 240 days during the preceding year from the date of his termination. Petitioner could have called for the records from the respondents, which also has not been done by him. In the absence of any evidence, establishing he having completed 240

days in the preceding year from the date of his termination, the finding as recorded by the Industrial Tribunal-cum-Labour Court in its impugned award dated 19.02.2009 (Annexure P-11) cannot be faulted with.

15. As the petitioner-workman has failed to prove that he had worked for 240 days or more with the respondent-management in the immediate preceding year from the date of his termination, his claim cannot be accepted, there being no violation of the provisions of Section 25-F of the Act.

16. In view of the above, the impugned award dated 19.02.2009 (Annexure P-11) does not call for any interference by this Court. Thus, finding no merit in the present writ petition, the same stands dismissed.

July 17, 2020
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No