

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20555 of 2015 (O&M)

Date of Decision: 29.01.2020

Smt.Vidya

... Petitioner

VS.

PO, Labour Court, Hisar & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Deepak Sonak, Advocate for the petitioner

Ms. Palika Monga, DAG Haryana

GIRISH AGNIHOTRI, J. (Oral)

(1) This order shall dispose of CWP Nos.3384 & 20555 of 2015 as common issues are involved. For the sake of order, CWP No.20555 of 2015 is being treated as the lead case.

(2) The present writ petition has been filed by the petitioner, Smt.Vidya, *inter alia* praying for a writ in the nature of *certiorari* to quash the award dated 17.09.2012 (P3) passed by learned Labour Court, Hisar whereby the claim of the petitioner/work-lady for reinstatement of her services has been rejected.

(3) A perusal of the award (P3) *inter alia* would show that the work-lady was engaged as Beldar by the respondents on 10.07.1988 on payment of monthly wages and was posted as such in Loharu Range of Territorial Division. The work-lady worked from 10.07.1988 to 31.12.2000. It is further case of the work-lady that she was then transferred to Social Forestry Division where she worked 01.01.2001 to 31.03.2006. The case of the work-lady is that on 01.04.2006 when she reported for duty she was not allowed to join. The case of the work-lady is that the termination is in

violation of Sections 25N, 25F, 25G, 25H of the Industrial Disputes Act, 1947.

(4) The stand of the management before the Labour court was that the aforementioned facts alleged by the work-lady were denied. It was the case of the management that the work-lady was engaged as casual labourer for the first time in the month of January, 1989. It was also the case of the management that the work-lady had not completed 240 days in any preceding 12 months.

(5) The work-lady had moved an application for directions to respondents to produce the record pertaining to the Territorial Division of Department from 10.07.1988 to 31.03.2000. It is also submitted by her that the direction was issued to the respondents to produce the said record but the entire record was not produced by the respondents on the plea that the same was not available. The explanation given by the management was that the said record is not available.

(6) Learned counsel for the respondent has made submissions by making reference to para 15/16 of the award to submit that it is true that the entire record for the period from 10.07.1988 to 31.03.2000 had not been produced but on the said ground alone no adverse inference should be drawn against the respondents. It is then submitted that for the period from 01.01.2001 to 31.03.2006, record was produced and as per the same work-lady had not completed 240 days.

(7) This Court, in view of the above facts, is of the considered view that the respondent-management is a Government Department. The funds available with the Department and the funds disbursed will at least have the names of those to whom the funds have been disbursed. Such record is

always available with the Department. The records which were summoned do not show that any effort was made by the management to prove that in fact for the period in dispute the stipulated amount was spent for salaries of the work and that amongst those to whom salaries were disbursed the name of the work-lady did not figure. It cannot be lost sight of the fact that the work-lady who is neither educated nor is in a capacity or position to have access to the record can in fact prove in absence of records being produced by the respondent-management. As have been noticed in the present case, the work-lady had even moved an application in which direction was also given by the Labour Court to the management to produce the record, however, in spite this, the record which can safely prove the factum of the actual services rendered by the work-lady has not been produced.

(8) In this view of the matter, this Court deems it appropriate to quash the award dated 17.09.2012 passed by the Labour court. The matter is remanded back to the Labour Court. Considering the fact that the reference was raised in the year 2007 both the parties shall be permitted two opportunities each by the Labour Court to produce the records and fresh award/order be passed by the Labour Court as expeditiously as possible.

(9) The writ petition stands allowed in above terms.

29.01.2020

Vvishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Girish Agnihotri)
Judge

Yes/No

Yes/No