

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26014 of 2013 (O&M)

Date of Decision: 27.01.2020

The Executive Engineer,
Haryana State Agriculture Marketing Board, Panipat ... Petitioner

VS.

The PO, Industrial Tribunal, Panipat & Anr. ... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Harshit Joon, Advocate for
Mr. Pankaj Jain, Advocate for the petitioner

Mr. Naveen Daryal, Advocate for respondent No.2

GIRISH AGNIHOTRI, J. (Oral)

(1) The present writ petition has been filed by the petitioner - the Executive Engineer, Haryana State Agriculture Marketing Board, Panipat, *inter alia*, with a prayer to quash the award dated 16.04.2013 (P1) passed by the Industrial Tribunal, Panipat whereby respondent No.2 Lokesh Kumar Sharma has been ordered to be reinstated with continuity of service along with 50% backwages from the date of demand notice i.e. 20.08.2001.

(2) Respondent No.2 in the claim statement (P2) had made various averments to challenge the termination order. In the claim statement, respondent No.2 had alleged that he was appointed as Typist on 01.04.1993 in the office of XEN, HSAMB, Panipat. In para 1 of the claim statement, he had mentioned the names of the Executive Engineers under whom he served as also the period of his engagement.

(3) In para 2 of the claimant statement, he has submitted that the workman was drawing salary of ₹ 1200/- per month. In para 4&5, he had submitted that Section 25F of the Industrial Disputes Act, 1947 (in short, the Act) was violated and the management has not followed the principle of

“first-come-last-go” at the time of terminating the service of the applicant and thus violated Section 25G of the Act.

(4) Reply to the claim statement was filed by the petitioner-management. In para 1 of the written statement, the petitioner-management had submitted that it is wrong to allege that the workman was appointed as Typist on 01.04.1993 in the office of XEN, HSAMB. It is submitted that the workman was never appointed as Typist, rather he was appointed as casual labourer on daily wages. In para 4 of the reply, it has been submitted that it is wrong to allege that the management was required to serve one month notice in writing or that he was to be paid wages in lieu of Section 25-F of the Act.

(5) In para 5 of the written statement, it has been *inter alia*, simply submitted that in regard to the allegation of retainment of the juniors, it is submitted that the applicant has no concern with the same.

(6) This Court deems it appropriate to uphold the award *qua* reinstatement for the following reasons.

(7) The Labour Court vide its award dated 16.04.2013 has *inter alia*, noticed in para 7 that the case of the workman was that his services were terminated on 01.01.1995 without giving him notice under Section 25F or pay in lieu of the notice. It has been further noticed that the management also engaged his juniors, namely, Ram Krishan, Pradeep, Sudesh Veena and Geeta after termination of the services of the workman but has not given preference to him as required under Section 25-H of the Act. In para 9 of the award, learned Labour Court had framed the question and gave its findings in the following manner:-

“9. Now, the crucial question that is to be seen is whether the workman had completed the continuous service of 240 days in

the preceding year of his termination so as to attract the mischief of Section 25-F of the ID Act. To prove his case the workman summoned WW2 namely Shri Arvind Kumar Clerk, who was directed to bring the summoned muster roll for the period from 1.4.93 to 1.1.95 but he has stated that he had not brought the summoned muster roll because the same was destroyed by the department. MW1 has also admitted during his cross-examination that he had not brought voucher during the period from 6/93 to 1/95. He showed his ignorance regarding Ex.M-5 and also stated that he has no knowledge about destroyed muster roll. He has also further admitted that in voucher only name of workman and working days are mention but in muster roll all details were given like name, father's name, address and also the signature of the workman and had not brought muster roll during the period from 6/93 to 1/95. Thus under the facts and circumstances, this Court is left with no option except to draw an adverse inference for not producing the summoned record and it will be deemed that the management has violated the provisions of Section 25-F of the Industrial Disputes Act. It has been held by our Hon'ble High Court in Divisional Forest Officer (Social Forestry Project), Bhiwani now the Divisional Forest Officer (Territorial), Bhiwani versus Smt. Roshni Devi & Anr. 2010 (4) SCT 271 that "Section 25-8- 240 days of service within one year preceding the date of termination of service – onus to prove –Non production of record by management and an adverse inference drawn by Labour Court against the management justification of held that the witness summoned to produce the records in possession of the management, does not produce the same and further states that it is not available and will not be available in future as well as an adverse inference drawn by Labour Court is fully justified." Reliance in this context was rightly placed upon State of Haryan versus Presiding Officer and another 2007(1) RSJ 447 (DB) and State of Haryana versus Suresh Kumar and another 2001 (2) RSJ 286 (P&H HC) (DB). In this

regard, reference came to be had to the following case law: Gopal Krishanji Ketkar versus Mohmed Haji Latif and others (AIR 1968 SC 1413). The Gurdaspur Coop.Sugar Mills versus Dalbir Singh & Anr. 2001(3) SCT 77, HUDA, Gurgaon versus Rashid 2001(3) SCT 684 wherein it has been held that “no cogent evidence led by the management to prove that the workman did not work for a period of 240 days. Statement of workman corroborated by official of the management since record not produced, an adverse inference has to be drawn against the respondent.” Similar views were taken by Hon’ble High Court in Punjab Agriculture University, Ludhiana and another versus Presiding Officer, Labour Court Bathinda and another 2012 (1) SCT 728 wherein it has been held that “non-production of record of attendance of workmen-workmen stated on oath, that they worked and remained in continuous service of the management-termination of service-held that the termination of services of workmen would amount to retrenchment-the provisions of the Act would be applicable.” Similar views were taken in Hon’ble Punjab & Haryana High Court in 2001(3) RSJ 382 Ambika Prashad versus Punjab Urban Planning and Development Authority Chandigarh and another and Shamlal versus Punjab Urban Planning and Development Authority Chandigarh and another wherein it has been held that “adverse inference respondent has not produced record in the Labour Court to prove that workman has not completed 240 days of service though application submitted by the workman for production of record-held that a person in possession of the best evidence has to produce the same, otherwise adverse inference can be drawn against the said party irrespective of the fact that onus of proof does not lie on him and he was not called upon to produce the same adverse inference drawn against the respondent held that petitioner has completed 240 days”. In these circumstances, it is held that when summoned record has not been produced by the

respondent then adverse inference is to be drawn against the respondent.”

(8) Learned counsel for the respondents submits that in this case there are number illegalities that the management has committed. He submits that neither any notice as required under Section 25-F was given nor compliance of the said provision of Section 25-F was done by the management as pay in lieu of notice was also not given. He also submits that there is violation of Sections 25-F & 25-H also as persons junior to him as well as persons after his termination were engaged and have since been made regular by the management.

(9) Counsel for the respondent-workman submits that in the present writ petition, notice of motion was issued on 27.11.2013 and it was directed that the operation of the impugned award shall remain stayed subject to compliance of Section 17-B of the Industrial Disputes Act, 1947. He further submits that in spite these directions no wages have been given to the workman. It is averred that at the initial stage itself, counsel for the respondent-workman had given an affidavit and even today he is authorized to make a statement that the workman would forego all his backwages and the wages under Section 17-B so payable if reinstatement in service is upheld as ordered by the Labour Court.

(10) Record of the case would further show that page-45 onwards are Exh.M1 which are contingent bill vouchers. In each of the said voucher, it has been so recorded as *“payable to Head Clerk, HSAMB Panipat on account of the pay for the month of June, 1993, July, 1993 etc.”* wherein the name of the workman was also mentioned. Therefore, it would not be appropriate for the management to take a stand that the workman was not

Kumar Sharma was working as Head Clerk and he may be actually discharging his duties as Typist. Therefore this Court finds no infirmity in the award passed by the Labour Court dated 16.04.2013.

(11) Accordingly, the Labour Court award is upheld and modified to the extent that the respondent-workman shall not be entitled to backwages and in view of the statement made by his learned counsel, respondent No.2-workman will also not be entitled to any other wages under Section 17-B of the Act.

(12) The writ petition stands disposed of accordingly.

27.01.2020

Vvishal

(Girish Agnihotri)
Judge

1. *Whether speaking/reasoned?*

Yes/No

2. *Whether reportable?*

Yes/No