

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

**LPA No.2068 of 2019 (O&M)
Date of Decision :14.01.2020**

Rajesh Kumar

.....Appellant

Versus

**District Manager, Haryana State Cooperative Supply and Marketing
Federation Limited (HAFED) and another**

..... Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Kartar Singh Malik-I, Advocate for the appellant.

Mr. Deepak Balyan, Addl. A.G. Haryana.

ARUN PALLI, J.:

This is an *intra court* appeal, under Clause X of the Letters Patent, against an order and judgment dated 23.02.2018, vide which the learned Single Judge set aside the award dated 21.11.2014, rendered by the Labour Court, reinstating the appellant-workman and instead awarded compensation.

Aggrieved by the alleged termination, the appellant-workman raised an industrial dispute. Upon consideration of the letter Ex.W-1 and the testimony of Suresh Jawa (MW-1), the Labour Court found that appellant-workman had worked from 01.05.2003 till 18.04.2004. Further, for, the attendance record from February 2004 till April 2004, was not produced, adverse inference was liable to be drawn against the respondents and, therefore, it could be presumed that appellant-workman had worked for 240 days in one calendar year preceding his termination. And as there was no

compliance of the provisions of Section 25-F of Industrial Disputes Act, 1947 (for short 'the Act'), the termination of service of the appellant-workman was illegal. Resultantly, Labour Court vide award dated 21.11.2014, ordered reinstatement with continuity of service and 50% back wages. This is how, aggrieved by the said award, the respondents had approached this Court vide a writ petition, referred to above.

Learned Single Judge, on an analysis of the matter in issue and the material on record concluded that appellant was appointed as Chowkidar on daily wages in two different spells each consisting of 89 days i.e. from May 2003 to 28.07.2003 and from 24.10.2003 to 20.01.2004. *Ex facie*, the finding recorded by the Labour Court that the appellant-workman had worked from 01.05.2003 to 18.04.2004 was presumptuous, for, the respondents failed to produce the attendance records from October 2003 till January 2004. But, significantly the respondents produced the attendance register w.e.f. 01.04.2003 to 31.03.2004, appended with copy of the writ petition as Annexure P-6, which fully corroborated their stand. Nothing conclusive was brought on record by the appellant-workman at any stage of the proceedings either to show if he had actually served the respondents from 01.05.2003 to 18.04.2004. That being so, copies of the gate passes brought on record by the appellant-workman could hardly enure to his advantage. Needless to assert, to substantiate his claim he could always produce the salary slips/certificates and other cogent evidence. Thus, for, the appellant-workman had not worked for a period of 240 days in 12 calendar months, immediately preceding his termination, the provisions of Section 25-F of the Act were not attracted either. Be that as it may, the

learned Single Judge, upon consideration that nature of employment of the appellant-workman was purely contractual and his services having been brought to an end years ago i.e. in the year 2004, in the wake of the decision of the Supreme Court in **BSNL Vs. Bhurumal (2014) 7 SCC 177**, held that he, at best, could be awarded compensation. Accordingly, the appellant was awarded Rs. 50,000/-, required to be paid within three months, failing which he was also held entitled to interest @ 6% per annum. We are informed that appellant-workman has not yet been paid the awarded amount. Faced with this, learned State counsel submits that requisite amount, in terms of impugned judgment, shall be released to the appellant-workman within six weeks from today

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusion recorded by the learned Single Judge was either contrary to the record or suffered from any material illegality.

In the wake of the above, we are dissuaded to interfere with the impugned judgment and order passed by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

14.01.2020

Manoj Bhutani

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No