

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

C.R NO. 2291 OF 2021

DATE OF DECISION : 12.10.2021

M/s Malwa Gas Service

...Petitioner

Versus

**The Presiding Officer, Industrial Tribunal
Patiala and another**

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Abhivadya Sood, Advocate,
for the petitioner.
(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

Petition herein is under Article 227 of Constitution of India for setting aside the order dated 04.02.2021 (Annexure P-1) vide which an application for production of documents of the respondent-workman, has been partly allowed by the Presiding Officer, Industrial Tribunal, Patiala.

2. Learned counsel for the petitioner submits that respondent No.2- workman claimed that he was in employment with the petitioner-Management from 01.05.2003 to 31.01.2017. The same was controverted by the petitioner-management by saying that respondent-workman joined on 01.02.2013. Thereafter, an application was filed by respondent-workman before Learned Industrial Tribunal, Patiala for production of records from the year 2003. Learned Tribunal vide impugned order dated 04.02.2021 (Annexure P-1) disposed of the application by directing the Petitioner-Management to produce the

attendance register of the workman from the first year from 01.05.2003 and the year preceding 01.02.2013 and also the payment of wages record along with cash book.

3. Learned counsel for the petitioner further submits that as per Section 13-A of the Payment of Wages Act, 1936, the employer is required to maintain and keep records in respect of his employees for the period of three years only. The record summoned is personal and confidential and has no relevancy with the workman-respondent.

4. In support of his contentions, learned counsel has relied upon Apex Court judgment in case titled as “**Surendranagar, District Panchayat v. Dahyabhai Amarsingh**” 2006 AIR (SC) 110 wherein it has been observed as below:

XXX XXX XXX

“19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Courts below have wrongly drawn an adverse inference for non production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25 F of the Industrial Disputes Act.”

be drawn shall come in his way for non-production of records.

4. He submits that under the Payment of Wages Act, the legal mandate on the part of the employer is to maintain records for the past 3 years. He submits that it is not humanly possible to maintain such voluminous records in view of the nature of job rendered by the workmen due to their frequent hiring and firing.

5. Be that as it may, the argument that adverse inference would be drawn is based on observation made by learned Tribunal while directing the petitioner/management to produce the records. The same, in any case, would be eventually determined at the final stage and it is open to the management to argue whether or not adverse inference can be drawn in the teeth of the statutory mandate being only to maintain 3 years of records. Learned Tribunal at that stage would proceed in accordance with law, as far as the instant proceedings are concerned, no grounds are made out to interfere.

6. The petition, is accordingly, disposed of with aforesaid observations.”

8. The instant petition stands disposed of in terms of order passed by this Court in CR No. 575 of 2021,*ibid*.

OCTOBER 12, 2021
Shalini/vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No