

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

306 (7 cases)

**CWP No.11273 of 2004(O&M)
DATE OF DECISION:22th JULY, 2022**

Ram Chander

.... Petitioner

Versus

Presiding Officer, Labour Court, Ambala and another

.... Respondents

2.

CWP No.18225 of 2004 (O&M)

Suresh Kumar

.... Petitioner

Versus

**The Management of the Divisional Forest Officer Social Forestry,
Pipli, Kurukshetra and another**

.... Respondents

3.

CWP No.2121 of 2005 (O&M)

**State of Haryana through District Forest Officer, Production
Division, Hisar and another**

.... Petitioners

Versus

Inderpal and another

.... Respondents

4.

CWP No.15130 of 2005 (O&M)

**State of Haryana through Executive Engineer, Provincial Division
No.1 (B&R), PWD Sonapat**

.... Petitioner

Versus

Meda and another

.... Respondents

5.

CWP No.15338 of 2005 (O&M)

Divisional Forest Officer, Forest Department

.... Petitioner

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and
another**

.... Respondents

6. CWP No.2271 of 2006 (O&M)

State of Haryana through Divisional Canal Officer, Adampur and another

.... Petitioners

Versus

Ravi Dutt and another

.... Respondents

7. CWP No.2587 of 2006 (O&M)

Kartara

.... Petitioner

Versus

Presiding Officer, Labour Court, Ambala and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. J.P. Dhull, Advocate,
for the petitioner in CWP No.11273 of 2004.

None for the petitioner in CWP No.18225 of 2004.

Mr. J.S. Cooner, Advocate,
for the petitioner in CWP No.2587 of 2006.

Mr. Harish Rathee, Deputy Advocate General, Haryana
for the petitioner in CWP Nos.2121, 15130, 15338 of 2005
and No.2271 of 2006 and
for the respondents in CWP Nos.11273 & 18225 of 2004
and No.2587 of 2006.

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RAJBIR SEHRAWAT, J. (Oral)

This order shall dispose of all the aforementioned writ petitions because all these were already grouped together and to some extent involve the common questions of law and the facts. For reference, the facts are being taken as mentioned in CWP No.11273 of 2004.

The petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ of Certiorari for quashing the

impugned award dated 22.09.2003 (Annexure P-2) passed by respondent No.1, with certain other prayers made in the present petition.

The facts of the case, in nutshell, are that the petitioner-workman asserted that he was employed as Tractor Driver with the respondent-department in June, 1986. His work and conduct had remained satisfactory. However, the service of the petitioner was terminated w.e.f. 01.06.1996 without any notice and without payment of any retrenchment compensation, though the work of the post was still available with the respondents. Asserting these facts, the petitioner had raised an industrial dispute. The same was referred to the concerned Labour Court. The Labour Court has answered the reference against the petitioner. Hence, the present petition.

Arguing the case, the counsel for the petitioner has submitted that the Labour Court has recorded a positive finding that in twelve calendar months preceding the date of termination of service of the petitioner, he had completed more than 240 days of service. Even, the record produced by the respondent-department shows that the petitioner had completed 281 days of service. Therefore, the petitioner was fully entitled to the protection and the benefits as available under the Industrial Disputes Act, 1947 (for short, the Act), if the petitioner was to be removed from the service. However, the procedure as prescribed under Sections 25 F and G of the Act had not been followed by the respondent-department. Hence, the termination of service of the petitioner was in violation of the provisions of the Act.

The counsel for the petitioner has further submitted that although the Labour Court has recorded a finding that the petitioner had

completed 281 days of service in twelve calendar months before his termination, still the award has been passed against the petitioner on the premise that the Forest Department is not an industry as per the definition given in the Act. However, this finding of the Labour Court is patently erroneous. The said aspect has been duly considered by this Court and through two separate judgments rendered by Division Benches of this Court, it has been held that the Forest Department is an industry. To buttress his arguments, the counsel for the petitioner has relied upon the judgments rendered by Division Bench of this Court in the cases of ***State of Haryana Versus Ram Avtar and another, CWP No.7154 of 2005, decided on 07.05.2005*** and ***Divisional Forest Officer, Sirsa Versus Jagdish and others, CWP No.375 of 2003, decided on 22.04.2003***. Accordingly, it is submitted by the counsel for the petitioner that once this Court has already held that the Forest Department is an industry, then no basis is left for sustaining the award passed by the Labour Court. The award deserves to be set aside and the petitioner deserves to be granted the relief as per the law.

Although in CWP No.18225 of 2004, and CWP No.2587 of 2006, also the legal aspect involved qua the Forest Department being an industry is the same, however, in the awards involved in these writ petitions, the finding recorded by the Labour Court is that the workman had completed only 138 days of service in the case of workman involved in CWP No.18225 of 2004 and had completed only 34 days of service in the case of workman involved in CWP No.2587 of 2006. The counsel for the petitioner has submitted that the Labour Court has wrongly recorded the said finding. The respondent had not produced the relevant record.

Hence, even in their cases, the finding qua not completing 240 days of service deserves to be set aside.

On the other hand, the counsel for the respondent-Forest Department has submitted that the Forest Department cannot be treated to be an 'industry' as per the definition given in the Act. The counsel has stressed that since the Forest Department is governed by the separate rules concerning the respective cadres, therefore, the Forest Department cannot be treated to be an industry. The counsel has further submitted that there are no organized industrial activities, as such, conducted by the Forest Department. Rather, the department is carrying out a sovereign function by discharging the duties as enshrined upon the department under various forest enactments. Therefore, the forest department is not an industry. The counsel has further submitted that although the petitioner may have been shown to have completed 281 days of service in case of workman Ram Chander in CWP No.11273 of 2004, however, in case of other petitioners, the petitioner has completed only 138 days of service in CWP No.18225 of 2004, and the petitioner has completed only 34 days of service in case of CWP No.2587 of 2006. Therefore, in these two cases, the petitioners, by any means, are not entitled to any protection under the Act. No evidence has been led to show that any person junior to them was ever retained in service. Rather, the evidence which has come on file is that there was no work available with the respondent-department, therefore, no one was engaged. Hence, their petitions deserve to be dismissed.

While arguing the writ petitions filed by State of Haryana Forest Department, the learned counsel for the State has submitted that in

CWP No.2121 of 2005 also the workman has wrongly been held to have completed 240 days. Moreover, the workman had left the work on his own. There was no termination of his service and no junior to the workmen were retained in service. The award in this case has also been wrongly passed. The workman involved in CWP No.15338 of 2005 had also not completed 240 days of service. Moreover, the Forest Department is not covered under the definition of Industry. The Labour Court has wrongly held the Forest Department to be an Industry. Therefore, the Labour Court has gone wrong in law in passing the awards in all these cases in favour of the workmen.

In case of the writ petitions filed by the State of Haryana, it is submitted that the workman involved in CWP No.2271 of 2006 had not completed 240 days of service in 12 calendar months and he was appointed only on part-time basis. Hence, he was not entitled to the benefits of the Industrial Disputes Act. In case of the workman involved in CWP No.15130 of 2005 he had completed only 186 days in 12 calendar months preceding the alleged termination of service. The Labour Court has wrongly counted the service beyond 12 calendar months and has wrongly held that the workman shall be deemed to have completed 240 days of service if he had completed 240 days of service in any preceding year before termination of his service. Moreover, in these two cases the Irrigation Department of the state government was the alleged employer. The Irrigation Department does not even fall under the definition of Industry as defined under Industrial Disputes Act.

Having heard the counsel for the parties, this Court finds substance in the argument of the counsel for the petitioner(s)-workmen to the extent that the Forest Department is an industry. The said aspect has been duly considered by the Division Bench of this Court in the cases of ***Ram Avtar and another*** and ***Jagdish and others (supra)***, and it has been categorically held that the Forest Department is an industry. This Court is bound by the Division Bench judgments mentioned hereinabove. Hence, it has to be held that the Forest Department is an 'industry'.

Once the Forest Department is held to be an industry, then there is no dispute that the petitioner in CWP No.11273 of 2004 has completed 281 days of service, therefore, he was fully entitled to the protection of the legal provisions as contained in the Act. However, the Labour Court itself has held that the said provisions were not complied with. There is nothing on record to show that such a finding recorded by the Labour Court is wrongly recorded. Hence, the writ petition has to be allowed in case of CWP No.11273 of 2004.

However, in cases of CWP No.18225 of 2004 and No.2587 of 2006, no evidence is led on file by the workman to show that the workman had completed 240 days of service in twelve calendar months preceding the date of termination of their services. The department had even produced the record, however, even the said record shows only completion of only 138 days of service by the workman in case of CWP No.18225 of 2004 and the workman in CWP No.2587 of 2006 has completed only 34 days of service. Therefore, these two writ petitions are bound to fail because the workman had not completed 240 days of service in twelve calendar months preceding the date of termination of

their services and there is nothing on record that any person junior to them was retained at the time when their services were terminated.

Likewise, in CWP No.2121 of 2005 also the workman has been held by the Labour Court to have completed 240 days. Rather as per the material on record the workman had completed 334 days. No evidence has been led by the petitioner department that the workman had left the work on his own. Admittedly, no retrenchment compensation was paid to the workman. Therefore, the issue has rightly been decided by the Labour Court in favour of the workman. However, the workman involved in CWP No.15338 of 2005 had not completed 240 days of service in the 12 calendar months preceding the termination. The Labour Court has wrongly taken into consideration the service of the workman rendered for 240 days in the year about 4 years before the year of the alleged termination. Therefore, the Labour Court has gone wrong in law in passing the awards in favour of the workman. He was not entitled to the benefits of the Industrial Disputes Act on such an earlier year.

The Irrigation Department has been held to be an Industry by this Court in the case of ***Balwan Singh Vs Presiding Officer Industrial Tribunal Cum Labour Court and others, 2001 (4) RSJ 517.*** Therefore, the cases of the workmen relating to this department as well has to be considered on merits. In case of the workman involved in CWP No.15130 of 2005 he had completed only 186 days in 12 calendar months preceding the alleged termination of service. As per the Industrial Disputes Act the Court is required to see the continuous service only in 12 calendar months counted backward from the date of termination of service of workman. Any service beyond the span of 12 calendar months

is beyond the statutory prescription, and therefore cannot be pleaded to hold the action of the employer as vitiated. Therefore, the Labour Court has wrongly counted the service beyond 12 calendar months and has wrongly held that the workman shall be deemed to have completed 240 days of service if he had completed 240 days of service in any preceding year before termination of his service. However, in case of the workman involved in CWP No.2271 of 2006 had completed much more than 240 days of service in preceding 12 calendar months. This fact was not even seriously disputed by the petitioner-department. Mere fact that he was appointed on part-time basis cannot be taken as ground to defeat the rights of the workman to which he was entitled under the provisions of the Industrial Disputes Act. The counsel for the State has not referred to any provision in the Industrial Disputes Act to the effect that the part-time service is not to be counted towards the continuous service. Moreover, the argument of the petitioner that the respondent workman was a back-door entrant and he was not appointed through proper channel; is totally irrelevant. The labour laws do not know the back or front door through which the workman enters into service. On the contrary the labour laws are meant for; and these laws expressly profess to be meant for; the casual, non-regular, irregular and the unorganized workers. Hence the Labour Court has rightly answered the reference in this case in favour of the respondent-workman.

Although CWP No.11273 of 2004 is liable to be allowed, however, significant time has elapsed after the date of termination of service of the petitioner, therefore, it would not be appropriate to order reinstatement into service. Rather, it would be appropriate, if lump sum

compensation is granted to the petitioner. Keeping in view the length number of years of service, the nature of work in which the petitioner was engaged which required irregular number of working days, and keeping in view the standards laid down by the Supreme Court in case of **BSNL Vs. Bhurumal, 2014 (3) SCT 49**, an amount of Rs.4.00 Lakh would be an appropriate amount of compensation. Therefore, the petitioner is held entitled to a compensation of Rs.4.00 Lakh. Accordingly, respondent No.2 is directed to pay the amount of Rs.4.00 Lakh to the petitioner in CWP No.11273 of 2004 within a period of three months from today. The writ petition CWP No.11273 of 2004 is allowed in the above said terms.

The writ petitions i.e. CWP No.18225 of 2004 and CWP No.2587 of 2006 filed by the other workmen are dismissed.

Out of the four writ petitions filed by the State departments, the CWP Nos.2121 of 2005 and 2271 of 2006 deserves to be only partly allowed. Although the findings recorded by the Labour Court are upheld but the relief granted to the workmen in these writ petitions deserves to be modified. Because significant time has elapsed after the date of termination of service of the workmen, therefore, it would not be appropriate to order their reinstatement into service. Rather, it would be appropriate, if lump sum compensation is granted to the workmen in these cases. Keeping in view the length number of years of service, the nature of work in which the workmen were engaged and keeping in view the standards laid down by the Supreme Court in case of **BSNL (supra)**, an amount of Rs.3.00 Lakhs would be an appropriate amount of compensation for the workman in CWP No.2121 of 2005 and an amount

of Rs.2.5 Lakhs would be the appropriate amount of compensation for workman in CWP No.2271 of 2006. Therefore, the respondent-workmen are held entitled to the compensation as mentioned above. Accordingly, the petitioner is directed to pay the amount of compensation to the respective workmen as mentioned above within a period of three months from today. The CWP Nos.2121 of 2005 and 2271 of 2006 are partly allowed in the above said terms. However, the CWP Nos.15130 of 2005 and 15338 of 2005 are allowed and the awards passed by the Labour Court in these cases are set aside.

Resultantly, CWP No.11273 of 2004 is allowed in the above said terms.

CWP No.18225 of 2004 and CWP No.2587 of 2006 are dismissed.

CWP Nos.2121 of 2005 and 2271 of 2006 are partly allowed in the above said terms.

CWP Nos.15130 of 2005 and 15338 of 2005 are allowed.

The pending miscellaneous applications, if any, are also disposed of accordingly.

22th JULY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*