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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

CWP 19908-2021
DATE OF DECISION: 13.05.2022

Ashok Kumar

....Petitioner

Versus

Presiding Officer and another

....Respondent

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

-.-

**Present: Mr. Anil Shukla, Advocate
for the petitioner**

-.-

Rajbir Sehrawat, J. (Oral)

This is a writ petition filed under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari for quashing the impugned award dated 04.12.2018 (Annexure P-6) passed by respondent No. 1. Further prayer has been made for issuance of a writ in the nature of mandamus, directing the respondents to reinstate the petitioner with all consequential benefits.

The facts, in brief, as pleaded in the petition and as submitted by counsel for the petitioner are that the petitioner was appointed with the respondent-management as Field Worker on 01.02.2002 on a monthly salary of Rs.15,500/-. In May, 2005, the petitioner became member of Employee's State Insurance and Provident Fund. Thereafter, he had been working to the satisfaction of the respondent-employer. However, on

18.09.2013, the respondent-management terminated the services of the petitioner in an illegal and arbitrary manner; without any notice/charge sheet and without paying any retrenchment compensation. While service of the petitioner was terminated, the persons junior to him, were retained in service. The petitioner had requested the respondent-employer to take him back in service, however, the same was not heeded to. The petitioner had raised an industrial dispute, which was referred to the Labour Court. However, the Labour Court has decided the reference against the petitioner. Hence, the present writ petition.

Arguing the case, counsel for the petitioner has submitted that the Tribunal has committed a grave illegality in answering the reference against the petitioner on the ground that the petitioner was not a workman. As per the issue framed by the Labour Court, the onus to prove that the petitioner was not a workman, as defined under Section 2 (s) of the Industrial Disputes Act, 1947, was upon the respondent-management. However, no evidence has been led to prove that the petitioner was not a workman. Whatever evidence has been led on the file, the same is only formal in nature. The duties of the petitioner have not been put on record, therefore, the findings recorded by the Labour Court are totally wrong and unjust.

Having heard counsel for the petitioner and having perused the case file, this Court does not find any substance in the arguments raised by counsel for the petitioner. Although the onus to prove the issue, framed by the Labour Court, was upon the respondent-management, however, perusal of the issue itself shows that the onus of proof was not fixed properly. The

burden to prove a fact has to be on a person who asserts positive of the said fact. There cannot be any positive evidence of a negative of a fact. The factors probalizing the negative of a fact can be led in evidence only for the purpose of rebutting the positive of a fact. Therefore, the burden of proof of the issue should have been upon the petitioner to show that he was a workman within the definition as defined under Section 2(s) of the Industrial Disputes Act, 1947 and that he was entitled to benefits under the Act. However, otherwise also, the respondent-management has duly proved the fact that the petitioner was not a workman as per the definition given in the Act. Perusal of the award passed by the Labour Court shows that the respondent-management has placed on record the documents in evidence, showing the fact that the petitioner was working as HRA Manager with the respondent-management. This fact was also proved on record by MW2 Ishwar Singh, Clerk O/o Labour Court-I, Faridabad, who was examined by the respondent-management before the Labour Court. Not only that, during cross examination even, a suggestion was not put to the said witness that the petitioner was not working as HRA Manager or that he was wrongly shown as HRA Manager by the respondent-management in Exhibit MW2/2. Further-more, another witness produced by the respondent-management; MW3 Yogesh, HR Executive with the respondent company; has testified that the petitioner was the incharge of the HRA department of the company and that he had been participating in the conciliation meetings before the Labour-cum-Conciliation Officers on behalf of the respondent. There is not even cross examination of the said witness by the petitioner; to the effect that he was not working as HRA

Manager. Hence, the respondent-employer has duly proved the fact that the petitioner was not working as a workman; rather he was working as HRA Manager with the respondent-management.

On the other hand, the petitioner, who claims to be a workman, has not led any evidence on record to rebut the above-said assertions and evidence led by the respondent-management. Moreover, the record also shows that the petitioner was removed from service of the company by way of punishment; after holding an inquiry. Even the said inquiry has been found to be valid by the Labour Court. This Court does not find any fault with the findings recorded by the Labour Court, on both the counts.

Hence, finding no merits in the present petition, the same is dismissed.

(Rajbir Sehwat)
Judge

May 13, 2022
mohan bimbura

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