

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

204(1)

CWP No.13557 of 2013 (O&M)
DATE OF DECISION: 08th JULY, 2022

**The Range Officer, Forest Department, Doraha (Ludhiana) and
others**

.... Petitioners

Versus

The Presiding Officer, Industrial Tribunal, Ludhiana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Harsimrat Rai, Deputy Advocate General,
for the petitioners.

Mr. Jaswinder Singh, Advocate,
for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for quashing the award dated 08.08.2012 (Annexure P-1), passed by respondent No.1.

The facts, as involved in the present petition, are that the respondent No.2-workman claimed that he had been working with the petitioners-department for the past 15 years on daily basis and he was drawing a salary at the rate of Rs.81.70 per day. His service was terminated by the petitioners-department on 01.04.2003 without issuing any notice and without payment of retrenchment compensation. The dispute having been raised, the same was referred to the Labour Court.

The Labour Court has answered the reference in favour of respondent

No.2-workman. Challenging the said award, the petitioners-employer has filed the present petition.

Arguing the case, the counsel for the petitioners has submitted that mere fact that the respondent-workman has been doing some work for some days, though not admitted, would not bring the respondent-workman within the protections granted by the labour laws. For holding that the respondent-workman was entitled to protection under Sections 25 F and 25 H of the Industrial Disputes Act, 1947, the Labour Court was required to record a finding, based on some evidence, that the respondent-workman had completed 240 days in the twelve calendar months preceding the alleged date of termination of his service. However, in the present case, there is nothing on record to even remotely suggest that the respondent-workman had completed 240 days in the twelve calendar months preceding the alleged date of termination of his service. Rather, the petitioners-employer never terminated his services. It was an abandonment of job by the respondent-workman. Moreover, whatever record was available with the petitioners-employer qua the employment of the respondent-workman, the same was duly produced before the Labour Court. As per the record of the petitioners-employer, the respondent-workman had worked only for 132 days in the year 2002 and only for 44 days in the year 2003. Accordingly, it is submitted that even if both the years are clubbed together, the respondent-workman completed only 176 days of service, which is much lesser than the requirement of 240 days of service in the twelve calendar months. Hence, the Labour Court has wrongly recorded that the respondent-workman had completed 240 days and, therefore, he is entitled to protection. Hence, it

is submitted that the award passed by the Labour Court deserves to be set aside and the writ petition deserves to be allowed.

On the other hand, the counsel for respondent No.2-workman has submitted that the petitioners-department had not produced the muster rolls for the period before the year 1999 and that in the year 2001 the respondent-workman had completed 251 days and not 226 days. Moreover, they have not adduced any evidence to deny the fact that the respondent-workman had completed 240 days of service. Accordingly, it is submitted that the award has rightly been passed by the Labour Court. Therefore, the present petition deserves to be dismissed.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the petitioners. Undisputedly, the respondent-workman has not led any documentary evidence to show that he had completed 240 days of service in the twelve calendar months preceding the alleged date of termination of his service. On the contrary, the petitioners-employer has produced the materials before the Labour Court to show that the respondent-workman had worked only for 132 days in the year 2002 and for 44 days in the year 2003. Therefore, as per the record available before the Labour Court, the respondent-workman, by any means, cannot be said to have worked for 240 days in the twelve calendar months preceding the alleged date of termination of his service. Hence, the finding recorded by the Labour Court qua completion of 240 day of service by the respondent-workman is without any evidence. Rather, the same goes against the evidence led by the petitioners-employer.

Although, the counsel for the respondent-workman has submitted that the petitioners-employer has not produced the muster rolls for the period before the year 1999 and that in the year 2001 the respondent-workman had completed 251 days and not 226 days, however, for the purpose of the proceeding before the Labour Court, the same is not even the relevant fact; when the respondent-workman himself is asserting that his service was terminated in the year 2003. The only relevant record to be seen by the Labour Court would have been the record for twelve months prior to the date of alleged termination of his service.

In view of the above, this Court finds that the Labour Court has wrongly passed the award without there being any evidence to support the findings recorded by the labour Court. Therefore, the same deserves to be set aside.

Ordered accordingly.

In view of the above, the present writ petition is allowed and the award passed by the Labour Court is set aside.

The pending miscellaneous application, if any, is also disposed of as such.

08th JULY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*