

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17853-2019 (O&M)
Date of Decision: 21.10.2022

Gram Panchayat of Village Bego Majra Petitioner

Versus

Presiding Officer, Labour Court, Ambala and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ravinder Malik (Ravi), Advocate,
for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana,
for respondents No.1 to 3.

None for respondent No.4.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the impugned award dated 28.01.2019 (Annexure P-3) passed by respondent No.1, whereby the petitioner has been directed to reinstate respondent No.4 in service with continuity of service along with 50% back wages and all consequential benefits.

The facts, as pleaded in the present petition, are that respondent No.4 had asserted that he was employed with the petitioner-Gram Panchayat as temporary Tube-well Operator in the year 2005. He worked there from July, 2005 till 20.05.2016. However, his service was abruptly terminated by the petitioner-Gram Panchayat. Before termination of service, neither

respondent No.4 was given any notice nor any retrenchment compensation was paid to him. Asserting these facts, respondent No.4 had raised an industrial dispute. The same was referred to the Labour Court. The Labour Court has answered the said reference in favour of respondent No.4. Hence, the petitioner-Gram Panchayat has filed the present petition.

Arguing the case, learned counsel for the petitioner has submitted that there is nothing on record to show that respondent No.4 had any employee-employer relationship with the petitioner-Gram Panchayat. Moreover, no evidence has been led by respondent No.4 to establish the fact that he was employed with the petitioner-Gram Panchayat for more than 240 days in 12 calendar months preceding the date of alleged termination of service of respondent No.4. In fact, respondent No.4 was being paid money received from the Government, who was to operate the tubewell in the morning and in the evening. Otherwise, respondent No.4 was, undisputedly, in the regular employment somewhere else as a Driver. Hence, in the absence of the employer-employee relationship and in the absence of any record to show that respondent No.4 had completed 240 days of service in 12 calendar months preceding alleged termination, the Labour Court could not have passed the award in favour of respondent No.4. Accordingly, the Labour Court has gone wrong in law in answering the reference in favour of respondent No.4.

There is no representation on behalf of contesting respondent No.4, despite service and despite having been granted ample opportunities to contest the present case. Therefore, this Court is deprived of his assistance

on the part of respondent No.4. However, there are pleadings and material on record which this Court has to consider for deciding the present petition.

Having heard learned counsel for the petitioner and having considered the material on record, this Court finds substance in the arguments raised by the learned counsel for the petitioner. It is not even in dispute, rather, it is the case of respondent No.4 himself that he had been in regular employment as a Driver with one Naresh Jandhu for a long time when he was also operating the tube-well pump in question. Therefore, the assertion of the learned counsel for the petitioner that the respondent No.4 was being paid charges only to operate tubewell twice a day, i.e. in the morning and in the evening, is found to have merit. Once, the respondent No.4 was regularly employed somewhere else, then, he cannot claim the employee-employer relation with the present petitioner. In the absence of such a relation, the petitioner-Gram Panchayat can not be held liable to pay any retrenchment compensation or to issue any notice before stopping the work which respondent No.4 was earlier doing. Still further, the record does not show any material or evidence having been led on the part of respondent No.4 to establish the fact that he had completed 240 days of service in the preceding 12 calendar months with the petitioner-Gram Panchayat. In view of the above, the finding regarding completion of 240 days by respondent No.4 is nothing but a baseless assumption raised by the Labour Court. In the absence of completion of 240 days of service, the employer is not liable to follow the procedure required for retrenchment of an alleged workman.

In view of the above, this Court finds that the impugned award

passed by the Labour Court is totally non-sustainable. Hence, the same is set aside and the present petition is allowed.

Since, the main case has been decided, therefore, all the pending applications also stand disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

21.10.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No