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

CWP-18041-2014

Date of Decision: 09.08.2022

The Principal Chief Conservator of Forest Department, Haryana and another

..... Petitioners

Versus

Sucha Ram and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Harish Rathee, Deputy Advocate General, Haryana,
for the petitioners.

None for respondent No.1-workman.

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 order dated 30.01.2014 (Annexure P-5) passed by respondent No.2; with a further prayer to stay the operation of the said impugned order.

The facts of the case, in brief, are that the respondent-workman asserted that he was employed by the petitioner-department as Labourer on daily wages in June, 1990. He continued in service as such. However, on 19.06.2004, when the respondent-workman went to join his duty, he was not allowed to work by the Forest Guard, and was told that the department had terminated his services. The respondent-workman raised an industrial dispute asserting these facts. The same was referred to the Labour Court. The Labour Court has answered the reference in favour of the respondent-

workman and has passed the order of reinstatement with continuity of service and 50% back wages. Challenging the said award, the present petition has been filed by the petitioner-department.

Arguing the case, learned counsel for the petitioner-department has submitted that the respondent-workman had not worked for a single day in the year 2003 and he had worked only for 26 days in the month of March, 2004. In fact, the respondent-workman had never completed 240 days in anyone of the years, much less of the last 12 calendar months. So far as the last 12 calendar months, immediately preceding the alleged termination of service of the respondent-workman is concerned, there is no evidence led by the respondent-workman to show that he had completed 240 days of service in 12 calendar months. The Labour Court has gone wrong in law and presuming the completion of 240 days of service by the respondent-workman only on the ground that the co-worker, who allegedly, was employed with respondent-workman and who was also, statedly, terminated along with the respondent-workman, had completed 240 days, as was reflected in another award passed by another Labour Court. Facts of another case could not have been imported in the present case. The respondent-workman was required to lead the evidence qua his claim in the present case. Nothing has been led in evidence by the respondent-workman. Therefore, the finding recorded by the Labour Court qua the respondent-workman having completed 240 days in 12 calendar months preceding his alleged termination, is totally without any basis. Moreover, the respondent-workman has also not led the evidence on file to show that any person junior to the

respondent-workman was ever retained at the time of his alleged termination of service. Hence, the award deserves to be set aside.

There is no representation on behalf of the respondent-workman. Therefore, this Court is deprived of the assistance on behalf of the respondent workman, as such. However, the case put up by the respondent-workman is already on record. Therefore, this Court has to proceed as per the material available on the record of the case.

Having heard learned counsel for the petitioner-department and having gone through the record of the case, this Court finds substance in the arguments raised by the learned counsel for the petitioner-department. A perusal of the file shows that the case of the petitioner-department has been that the nature of the work of the respondent-workman was seasonal in nature. Some labourers used to be hired for doing seasonal work; if at all there was some work. Neither there was any regular work with the petitioner-department where the respondent-workman could have been employed nor was he ever employed in continuity. In any case, the respondent-workman had not completed 240 days of service in the 12 calendar months. The respondent-workman has not even prima facie substantiated this assertion that he had completed 240 days of service in 12 calendar months. The Labour Court has also not recorded as to on what evidence it was basing its finding that the respondent-workman had completed 240 days of service in 12 calendar months preceding his termination. A perusal of the award shows that the Labour Court has accepted the *ipse dixit* of the arguments raised by the learned counsel for the

respondent-workman that he has completed 240 days of service. Even the counsel had not made any reference to any evidence while making this assertion that the respondent-workman had completed 240 days. The sole reliance had been upon the case of co-worker Bhola Ram, who had separately filed the claim petition and in whose case, the High Court had set aside the award passed by the Labour Court and had ordered the reinstatement of the workman in that case. The pleadings and the evidence led in any other case can hardly be of any assistance while adjudicating upon the present case. Mere assertion that in another case, the co-employee had been reinstated, would not create any ground for presumption, that the respondent-workman had also completed 240 days of service in 12 calendar months or in favour of reinstatement of the respondent-workman; as such.

In view of the above, findings recorded by the Labour Court turn out to be without any basis. The award passed by the Labour Court is set aside and the writ petition filed by the petitioner-department is allowed.

(RAJBIR SEHRAWAT)
JUDGE

09.08.2022
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No