

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

223

CWP No.2017 of 2014 (O&M)
DATE OF DECISION: 15th SEPTEMBER, 2022

Jagbir

.... Petitioner

Versus

Presiding Officer and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. P.L. Verma, Advocate for the petitioner.

Mr. R.S. Randhawa, 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 seeking issuance of a writ in the nature of Certiorari for quashing of award dated 29.04.2013 (Annexure P-5) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad.

The brief facts, involved in the present case, are that the petitioner-workman asserted that he was appointed as Salesman with respondent No.2-Society, vide resolution dated 18.12.1992 with the salary of Rs.875/- per month. Thereafter, the petitioner remained in service with the respondent-society and handled a number of papers in his own handwriting. Although the respondent-society was paying salary to the petitioner upto May, 1994, however, for the period from 01.06.1994 till 08.06.1996 the petitioner was not paid the salary. Thereafter, the service of the petitioner was terminated w.e.f. 10.06.1996. However, before terminating the service neither any notice was given to the petitioner, nor any retrenchment compensation was paid to him.

Asserting these facts, the petitioner raised an industrial dispute. The same was referred to the Labour Court. The Labour Court had answered the reference against the petitioner, vide award dated 27.01.2000. However, that award was challenged by the petitioner before this Court vide CWP No.10069 of 2000. This Court had set aside the award dated 27.01.2000 and remanded the matter to the Labour Court, vide order dated 05.08.2009, for decision on the same afresh. Thereafter, the Labour Court has again passed the award answering the reference against the petitioner. It is against that award, the present petition has been filed.

The counsel for the petitioner has submitted that since the record regarding service of the petitioner was to be produced by the respondent-society and the same was not produced, therefore, adverse inference is required to be drawn. The petitioner has duly proved before the Labour Court that he was working with the respondent-society. 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 has submitted that the petitioner was sought to be appointed by the resolution dated 18.12.1992. However, during the proceeding itself, it came to notice of the Managing Committee that the petitioner was not resident of the village, therefore, as per the requirement of the relevant rules, he could not have been appointed as Salesman. Therefore, he was never appointed in the respondent-society. The petitioner has not produced any document to show that he had ever worked with the respondent-society. The documents (Annexures P-1 and P-3) are not relating to the petitioner, by any means. The same were issued by the Manager of the Society and

not the petitioner. Moreover, even the said documents were made in the year 1993. Therefore, there is nothing on record to show that the petitioner ever worked with the respondent-society during the twelve calendar months preceding the alleged date of termination. Hence, the Labour Court has rightly answered the reference against the petitioner. The counsel has further submitted that although the Labour Court had not found any force in the evidence and in the arguments raised by the petitioner, however, at the time of arguments, the petitioner had entered into a compromise under which the respondent-employer was directed to pay 5 months' salary to the petitioner on account of compensation. The counsel has further submitted that the said amount was accepted by the petitioner. Therefore, otherwise also, there was no ground left with the petitioner to challenge the award, as such. Having accepted the benefit under the award, the petitioner could not have challenged the same.

Having heard the counsel for the parties, this Court does not find any substance in the arguments of the counsel for the petitioner. The evidence on record shows that the respondent-society only considered the issue of appointment of the petitioner on the post of Salesman. However, he was never appointed, as such. The petitioner has not led any evidence to show that he ever worked in the respondent-society. Not even a single proof of payment of any wages to him has even been led on file. Not only that, even a co-employee working with the petitioner in the said society has not been examined by him. Therefore, there is nothing on record to show that the petitioner was even in service under the respondent-society during the twelve calendar months preceding the alleged date of termination.

Although, the counsel for the petitioner has relied upon some receipts, which are attached as Annexure P-2, with the present petition, however, these receipts do not help the case of the petitioner, in any manner. Neither these receipts are issued qua payment made to the petitioner, nor are the said receipts even stated to have been issued under the signatures of the petitioner as employee of the society. Therefore, these are totally irrelevant documents.

Moreover, a perusal of the award shows that the petitioner was granted compensation equivalent to 5 months' salary by way of a settlement between the parties before the Labour Court. It is not even in dispute that the said amount has already been paid by the respondent-society and received by the petitioner. Therefore, on this count also, the petitioner is estopped from questioning the validity of the award. The petitioner cannot be permitted to approbate and reprobate the award at the same time. Moreover, the petitioner has already been paid the compensation more than what he would have been entitled to under the provisions of the Industrial Disputes Act, 1947.

In view of the above, finding no merit in the present petition, the same is dismissed.

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

15th SEPTEMBER, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No