

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

CWP-18870-2018 (O&M)

Date of decision: October 21, 2022

Rajinder

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.K. Kaushik, Advocate for
Mr. Ajay Chaudhary, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned condition in the order dated 06.07.2018 (Annexure P-6), whereby petitioner has been denied benefit of a previous decision passed in his favour.

2. Somewhat similar controversy involved in another matter, wherein services of a co-delinquent, namely Jai Pal were also terminated along with the petitioner has already been adjudicated by a single bench of this court. Said Jai Pal had challenged his termination by way of CWP-1446-2018 which was allowed vide an order dated 26.07.2018. Speaking for this Court Rajiv Narain Raina, J. (as he then was in this Court) observed as below:-

“The Labour Court, Ambala vide award dated 18.11.2015 held the termination illegal and granted reinstatement with continuity of service and 50% back wages from the date of termination till his reinstatement. He was reinstated to service.

The accusation is that the petitioner was registered under Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) under Job Card No.HR-04-001-079-001/273111 dated 10.10.2008 and worked there from 16.01.2009 to 17.06.2013 in

different spells of time. However, there is no finding of a court of law regarding this accusation and in the absence of such a finding, it is highly premature for the Forest Department to assume that the deposition was false or that Jaipal had tendered false evidence. The Forest Department has not produced any material to show that Jai Pal has received double payment/salary i.e. from Forest Department and from MNREGA at the same time. It is trite to mention here that the services of a daily wager come to an end at the end of the day. He was not a government servant.

Apart from the above, a perusal of the award shows that Labour Court, while answering the award in favour of the workman Jaipal, not only relied upon his testimony, but also considered other factors as well as documentary evidence. The relevant extract from the award reads as follows:

“12. It is the specific case of the workman that he joined the management in July, 1985 at Kaithal Range and rendered uninterrupted service till 15.11.2013 when his services were abruptly brought to an end. In defence, the management has outrightly denied the very relationship of employer and employee between the parties. The specific stand of the management set out in the written statement is that the workman never worked with the management. Therefore, the important question which arises for determination before this Court is as to whether the workman was ever in the employment of the management?

A reference to the document Ex.W2 which is seniority list of 299 workers drawn by the Department and Labour Union jointly as on 20.08.2007 reveals that the workman was in continuous service of the management w.e.f. June, 1988 to August, 2007 i.e. for a period of 19 years. So is the position set out in another document of even date i.e. Ex.W3. In both these lists the name of the workman figured at Serial No.70. Likewise, document dated 15.05.2008 i.e. Ex.W-23, which contains the list of workmen deployed in different Blocks shows that the workman was posted at Kharka Block as is shown in the list of the workers at Serial No.47. Still further, Ex.W5 is a document which contains the Muster Rolls of similar situated workmen namely Jai Bhagwan from 2001 to 2011 and that of Smt. Lilo from 1991 to 2011; meaning thereby that they were in service even in 2011. It may be noted here that this record was maintained in the form of a computerized list. When the management was having muster rolls of the workmen namely Smt. Lilo and Jai Bhagwan etc. in the form of a computerized list then the management must have had the similar record qua each workman whose names find mentioned in the seniority list of 299 workers including that of workman Jai Pal, but the same was intentionally concealed. It has also been pointed out at this stage by the learned AR appearing on behalf of the workman Sh. R.S. Saini that the document Ex.W5 could be brought on the record when the record was requisitioned by the workmen

Smt. Lilo and Jai Bhagwan by moving an appropriate application. Thus, the management not only set out a false defence but made every endeavour to conceal and withheld the crucial record. Ex.W-22 is the muster roll of the workman Smt. Lilo which shows that she was in the service even in the year 2012. In these circumstances, the statement of the workman Jaipal made on oath coupled with the fact that his name figured in the lists Ex.W2 & W3 assumes significance that he was in the continuous service of the management till 15.11.2013 when he was retrenched illegally. That being so, the argument being advanced by the learned Government Pleader appearing on behalf of the respondents that there was nothing on the record to show that the workman had, indeed, served the management beyond 20.08.2007 pales into insignificance.

13. It is true that the initial onus to prove that the workman had, indeed, served for a period of 240 days in the 12 calendar months immediately preceding the date of his termination, is upon the workman. In the present case, the management has denied very relationship between the parties. The workman discharged the initial burden and proved that he was in service since July, 1985 to 2013 and falsified the stand set out by the management. And if despite that the management was to maintain that the workman, mathematical precision had not completed 240 days in preceding 12 months, the management was under obligation in law to have produced the requisite records for consideration of this Court. But how could the management could do so since producing necessary records would have been completely destructive of their defence that the workman was never in its employment. Thus, an adverse inference has to be drawn against the management. That being so, the irrefutable presumption that permeates the record is that the workman rendered uninterrupted service till his termination and thus, the provisions of Section 25-F of the Act out to have been complied with. Even if it is assumed that the provisions of Section 25-F of the Act are not attracted, still it does not advance the case of the management a bit as even otherwise the termination of the services of the workman is wholly unsustainable for multiple reasons. It is also pertinent to note here that the junior workers namely Mohinder, Dara, Piare Lal, Brij Lal, Khajan Singh and Sardara Ram, who joined the department later than the workman, were not only retained in service, but were even regularized. Thus, the termination of services of the workman was in apparent breach of section 25-G of the Act. In addition to it, it may also be noted that similarly situated workmen namely Smt. Lilo and Jai Bhagwan and 34 others have already been ordered to be reinstated with 50% back wages vide awards dated 30.09.2014 Ex.W38 and 27.08.2014 Ex.W39 passed by the learned predecessor Court of Dr. Neelima Shangla, the then

Presiding Officer, Labour Court, Ambala. Thereafter, the management also challenged those awards by way of filing Civil Writ Petition, but the Hon'ble High Court vide its common judgment dated 29.05.2015 (Ex.W41) passed in CWP No.7018 of 2015 dismissed the various writ petitions against the aforesaid awards of this Court. Therefore, the termination of services of the workman is liable to be set aside being violative of the provisions of Sections 25-F & 25-G of the Act."

Since the termination of the petitioner is based solely on this unfounded ground, then the same has to be declared void ab initio and the termination orders are liable to be ignored.

Consequently, the instant petition is allowed. The termination order annexed with the written statement filed today dated 12.06.2018 is set aside. The respondents are directed to regularize the services of the petitioner in terms of the award dated 18.11.2015 from the date juniors retained in service were regularized."

3. On a Court query, learned State counsel submits that no intra-court appeal has been filed against the aforesaid Single Bench judgment and the same has since attained finality.

4. Having gone through the pleadings and after hearing arguments, I am of the view that since the case of the petitioner and the role attributed to him is the same as that of Jai Pal, I see no reason why the benefit of aforesaid judgment be not accorded to the petitioner.

5. Accordingly, writ petition is allowed in terms of judgment *ibid*. Consequential benefits be given within 3 months from today.

6. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 21, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No