

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

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CWP No.3324 of 2014 (O&M)
DATE OF DECISION : 16th MARCH, 2022

Smt. Khazani Devi

.... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court &
others**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present : Mr. M. S. Rana, Advocate for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana.

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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 praying for quashing the impugned award dated 20.09.2012 (Annexure P-5) passed by respondent No.1; vide which reference qua the termination of service of the husband of the petitioner has been answered against him wrongly and illegally; along with certain other prayers.

It is submitted by counsel for the petitioner that the husband of the petitioner had worked from 01.06.1973 till 31.01.2001. His services were terminated, whereas juniors to him were retained by the respondent-department. This was done despite the fact that he was a

regular employee of the department; since he was regularized vide order dated 31.10.1985; which was placed as Exhibit W-1 on the record of the Labour Court. Taking the arguments further, the counsel for the petitioner has submitted that the Labour Court has gone wrong in law in answering reference against the petitioner on the premise that the petitioner had approached the Labour court after lapse of 16 years from the date of termination of service of her husband, i.e., 01.02.1988. The counsel has reiterated that mere delay in approaching the Labour Court cannot be a ground for answering the reference against the workman. The counsel has further submitted that even WW-2 Ashok Kumar; who is Clerk of the Department; has shown ignorance about the service by the husband of the petitioner and has not produced the service book regarding service of the workman to substantiate the assertion of the department that the husband of the petitioner had abandoned the job.

On the other hand, the counsel for the respondents-State has submitted that the workman had, in fact, abandoned the job w.e.f. 01.02.1988. Thereafter, he had never attended any office under respondents. Therefore, the husband of the petitioner had voluntarily left the job. Hence, there is no question of any termination of his services by the respondents. The counsel has further submitted that the petitioner had not placed on record anything to show that the workman discharged any kind of function in any establishment of the respondents-State after 01.02.1988. Supporting the conclusion arrived at by the Labour Court, the counsel for the State has submitted that the court below has rightly taken, the undue delay in raising the dispute, as one of the relevant factors for answering the award against the workman. The other ground,

on which the reference has been answered against the workman is that he has not completed 240 days in the 12 calendar months, preceding the alleged date of termination. In the end the counsel has submitted that there is absolutely no ground for invoking this court to interfere with the award passed by the Labour Court.

Having heard the counsel for the parties, this court does not find any ground to interfere with the award. The counsel for the petitioner has highlighted that the award has been answered against the workman only on account of the limitation, which the Labour Court was not supposed to do. However, this court finds that this is only one of the grounds emphasized by the Labour Court. Even on this count, it has come on record that the workman was not in service after 01.02.1988 and the demand notice was made in the year 2002. There is absolutely no explanation for this long delay. Instead of furnishing any explanation, genuine or otherwise, the workman had claimed that, in fact, he had worked up to 31.01.2002, therefore, there was no delay at all in raising the dispute. On this count as well, the petitioner did not lead any evidence to establish this assertion. The assertion of the respondent-department, as well as the record of the case, show that the petitioner was in service of the respondents only up to 01.02.1988. Thereafter, he never attended the office. This conclusion is fortified by the fact that although the workman claimed to have been regularized way back in 1985 vide Exhibit WW-1, however, despite that the petitioner has not led any evidence to show that the workman ever attended office of the respondent-department after 01.02.1988. The counsel for the petitioner has tried to put a lame execute that she was not having the record qua

service of workman after 1988 and that the department did not produce the same despite having been summoned. This excuse is non-sustainable on the face of it. Once the petitioner claimed the workman to be a regular employee of the department, then she had at least one evidence which is not within the control of the departmental authorities, and that is the payment of salary to him as a regular employee. Even that record of payment of salary as a regular employee after 1988 has not come on record. Hence, it is established that the workman never attended office after 1988.

The counsel for the petitioner has emphasized that the workman was not paid any retrenchment compensation nor was he given any notice before termination of service. However, even this argument is liable to be noted only to be rejected for the simple reason that the positive assertion of the respondent-department has been that the service of the workman was never terminated, rather, he had abandoned his job. In view of the failure of the petitioner to bring on record even the basic fact of payment of salary to workman as a regular employee after 1988, this assertion of the respondent-department gets ample credence. Hence, neither the workman is shown to have worked for 240 days in the preceding 12 calendar months from the date of alleged termination of service in the year 2001 nor the claim as such was raised within a reasonable time as counted from the year 1988. The workman cannot get premium upon his own default. Even if there is no limitation prescribed for making reference, that does not mean a license to the workman to file the legal proceedings at any time as per his choice. In absence of any prescribed limitation, it has to be a reasonable time within which the

person has to approach the court. Reasonable time would, obviously be as per the understanding of an ordinary person of ordinary prudence, as assisted by the general principles of law relating to limitation. The limitation for moving the court, in general cases, is about three years. Therefore, the delay on the part of the petitioner could have been ignored by the courts only if he had moved the court within or approximately the same time. However, by any means, 13 years can be no comparison with three years or approximately three years' time period. Hence, this court does not find any illegality or impropriety in the order passed by the court below.

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

16TH MARCH, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>