

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

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CWP No.4492 of 2016 (O&M)
DATE OF DECISION: 31st MARCH, 2022

**The Chairman, Punjab State Co-op Supply Marketing Federation
(Markfed) and others**

.... Petitioners

Versus

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

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. T.S. Sidhu, Advocate,
for the petitioners.

Mr. Amarjit Singh, 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, order or direction especially in the nature of Certiorari for quashing the impugned award dated 08.09.2015 (Annexure P-2), whereby the respondent No.1 has answered the reference against the petitioners and the claim of the respondent No.2-workman has been allowed.

The brief facts; as involved in the present petition; are that respondent No.2-workman asserted that he was working as a Clerk in the office of Manager, Markfed Rice Processing Complex, Naushera Pannuan, District Tarn Taran, Punjab. He was getting salary of Rs.2900/-

per month. The respondent-workman is having a qualification of M.A. (Political Science) and has also done diploma in computer application. Therefore, he was fully eligible for the post of clerk. The respondent-workman had completed 240 days in each year during the tenure he remained with the petitioners. Despite that, the services of the respondent-workman were terminated without following the procedure as established under the law. His service was terminated w.e.f. December, 2008 without complying with the provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947. Thereafter, numerous requests were made by the respondent-workman to the petitioners for reinstatement. However, the same were not acceded to. Hence, the labour dispute was raised by the workman; which was referred to the Labour Court. The reference having been made to the Labour Court, the same was answered in favour of the respondent-workman. Challenging the said award, the petitioners-firm has filed the present petition.

Arguing the case, the counsel for the petitioners has submitted that there is no evidence on record to show that the respondent-workman has ever worked for 240 days in the twelve calendar months immediate preceding the date of his termination. It is further submitted that, in fact, the respondent-workman had never remained as an employee of the petitioners. Rather, the father of the respondent-workman was a service provider with the petitioners, therefore, he might have shown his presence somewhere in his record. However, in the record of the petitioners, there is nothing to show that the respondent-workman ever worked with them.

On the other hand, the counsel for respondent No.2-workman has submitted that the respondent-workman had worked with the petitioners for about 8 long years. Since the respondent-workman was doing the clerical job, therefore, abundant record of his service is present in the official record of the petitioners only. The said record has duly been produced before the Labour Court in the form of receipts/passes issued by the respondent-workman at the out-gate of the complex. The said receipts/passes were from the receipt books issued by the petitioners only. Moreover, all the office orders of the petitioners were marked to the respondent-workman also, for being noted, being an employee of the petitioners. Not only that, the respondent-workman had even examined a co-employee, who duly deposed before the Labour Court to the effect that the respondent-workman had worked with the petitioners upto December, 2008. Hence, it is submitted that the Labour Court has rightly passed the award against the petitioners. Accordingly, the present petition deserves to be dismissed.

Having heard the counsel for the parties and having gone through the case file, this Court finds that the Labour Court has rightly passed the award. The petitioners started and ended with the assertion that the respondent-workman had never been in their employment. On the contrary, the respondent-workman has placed as many as 33 documents on record to show that he was in employment of the petitioners. All these documents have been placed on record and duly proved by WW3 Gurpreet Singh with the assertion that the respondent-workman has been working continuously for about 8 years. Despite that, the petitioners have not even cross-examined this witness on the said

assertion of the witness. Accordingly, the case of the respondent-workman duly stand supported by the documentary, as well as, the oral evidence, whereas, the unsubstantiated case of the petitioners have been of a flat denial.

Although, the counsel for the petitioners has relied upon the judgment rendered by Hon'ble the Supreme Court in '***M/s Essen Deinki Versus Rajiv Kumar, 2003 AIR (SC) 38***' to stress that it is the responsibility of the workman to show that he had worked for at least 240 days in twelve calendar months preceding his termination and that in the present case, the said burden has not been discharged by the respondent-workman, however, this argument is not supported by the evidence on file. There cannot be any dispute qua the proposition laid down in the above mentioned judgment of Hon'ble the Supreme Court. However, in the present case there is plethora of evidence which shows that the respondent-workman had worked continuously for 8 years from the year 2001 till 2008. Even, the witness has deposed to this effect and the said witness has not even been cross-examined by the petitioners. Hence, it can safely be taken to have been proved that the respondent-workman has successfully established before the Labour Court that he has worked for 240 days.

As mentioned above, the only assertion of the petitioners is that of a flat denial of the respondent-workman having ever worked with them. However, the respondent-workman has led so many documents in evidence showing that he was actually performing duties at the complex of the petitioners and was dealing with the official documents, including the seriatim receipts and out-gate passes issued by the office of the

petitioners. It is not even the case of the petitioners that the respondent-workman had stolen those receipt books and he continued issuing those receipts/passes for 7-8 years. It is also not the case of the petitioners that the supplies mentioned in those receipts and out-gate passes were never dealt with by the office of the petitioners. Hence, it is established beyond any doubt that the respondent-workman had been an employee with the petitioners. If at all, the petitioners intended to substantiate their flat denial of respondent No.2 ever having worked with them, the least it was expected from them; was that they should have produced the record of the relevant period; regarding the complex where the respondent-workman claimed to have worked. However, even that record has been withheld by the petitioners. This again is an attempt to hide the correct facts. Accordingly, the adverse inference has to be drawn against the petitioners even on that count.

In view of the above, this Court finds itself in agreement with the award passed by the Labour Court. Accordingly, the present petition is dismissed and the award passed by the Labour Court is upheld.

All pending miscellaneous applications, if any, are also disposed of as such.

31st MARCH, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No