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

CWP-9561-2016

Date of Decision: 24.05.2022

Hardev Singh

..... Petitioner

versus

Presiding Officer, Industrial Tribunal, Patiala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Raj Kaushik, Advocate,
for the petitioner.

Ms. Shubreet Kaur, Advocate, for
Mr. G.B.S.Nagar, Advocate,
for respondents No.2 and 3.

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 02.06.2014 endorsed on 28.07.2014 passed by respondent No.1, the same being illegal, contrary to the factual position and evidence on record, as also issuance of a writ of mandamus directing the respondent-Management to reinstate the petitioner in service with all benefits.

It is submitted by the learned counsel for the petitioner that the petitioner-workman had completed 240 days of service in 12 calander months preceding the date of termination of his service. The Labour Court has wrongly recorded the finding that the petitioner had not completed 240

days of service. In support of his arguments, learned counsel for the petitioner has referred to the cross-examination of MW1-Vinay Kumar, in which he has stated that the petitioner-workman had worked upto 28.04.2008 as daily wager. The same is the cross-examination of MW2-Amandeep Singh Sidhu and MW3-Dharampal. Learned counsel for the petitioner has further submitted that the respondent-employer had not produced the muster roll before the Labour Court. Therefore, there is nothing to contradict the statements of the witnesses, including the witness of the employer. Hence, the petitioner-workman has to be taken to have worked continuously upto 28.04.2008. If he so taken to have worked upto 28.04.2008, then he completes the period of 240 days of service. Hence, the award deserves to be set aside and the petitioner deserves to be reinstated into service with all consequential benefits.

On the other hand, learned counsel for respondents No.2 and 3 has submitted that the petitioner-workman worked with the respondent-employer only upto March, 2008. Thereafter, he was sitting on *dharna* with his other co-workers. In May, 2008, the petitioner-workman attended office only for one day. The petitioner-workman had never attended the office in the month of April, 2008. Since, the petitioner-workman, alongwith his co-workers, was sitting in a *dharna*, therefore, even an FIR was registered against 10-12 persons, some of whom were named in the FIR and some of them were reported to be unknown persons. Undisputedly, certain persons have been convicted out of the persons mentioned in the FIR. Therefore, even the petitioner-workman had abandoned the job out of fear of being

arrested in the said FIR. The petitioner-workman had even admitted in the cross-examination before the Labour Court that the FIR was registered against his co-workers, who were present in the Labour Court at the time of recording of the evidence. Carrying forward the argument, learned counsel for respondents No.2 and 3 has submitted that whatsoever record regarding the employment of the petitioner-workman was available, the same was duly produced before the Court. The petitioner-workman himself had not led any evidence to show that he attended the office even for a single day in the month of April, 2008. Hence, the Labour Court had rightly recorded the finding that the petitioner-workman had not completed 240 days of service in 12 calendar months preceding the date of termination of his service.

Having heard learned counsel for the parties, this Court finds substance in the arguments of the learned counsel for respondents No.2 and 3. It is not even in dispute that in the month of May, 2008, an FIR was registered against some persons for holding the *dharna* in the premises of the University and manhandling the Director (respondent No.1). The persons, who were named in the FIR have since even been convicted. It is not even in dispute that the said persons were close to the petitioner-workman. Hence, the preponderance of probability favours the argument of the learned counsel for respondents No.2 and 3 that the petitioner-workman had abandoned the job out of fear of being arrested in the said FIR. This assertion of the learned counsel for respondents No.2 and 3 is fortified by the fact that there is no evidence led on file by the petitioner-workman to show that he had attended the office of the respondent-University even for a

single day in the month of April, 2008. Another fact which shows the fairness on the part of the respondents is that for the month of May, 2008 the petitioner-workman is shown to have worked for one day. If the respondents were to terminate the service of the petitioner-workman, they would not have permitted the petitioner-workman to attend the office for a single day in the month of May, 2008. Hence, Labour Court had not committed any irregularity in recording the finding that the petitioner-workman had not completed 240 days of service in 12 calendar months preceding the day of termination of his service.

Although, learned counsel for the petitioner-workman has relied upon the witnesses mentioned above to highlight their admission that the petitioner-workman had worked upto 28.04.2008, however, the same witness MW1-Vinay Kumar, has also deposed that the petitioner-workman had never worked under him. He had further deposed that he cannot say that as to for how many years/days the petitioner-workman had worked. The witness had also emphasized the fact that the petitioner-workman was sitting in an illegal *dharna* and that the case was pending regarding the same. The another witness, namely MW2-Amandeep Singh Sidhu has also deposed that he could not say whether the petitioner-workman had been paid the salary upto 28.04.2008 or not, since, it was a matter of record. The record shows that no salary was paid to the petitioner-workman in the month of April, 2008. Hence, the oral testimony of these witnesses, being against the documentary record, does not carry much weight qua the factum of the petitioner-workman having worked in the month of April, 2008. Therefore,

on the basis of sole alleged admission by the management witnesses, the petitioner-workman cannot be held to have worked in the month of April, 2008. Needless to say that even these witnesses have not clarified as to for how many days the petitioner-workman had worked in the month of April, 2008. Hence, the finding recorded by the Labour Court cannot be disturbed on the basis of the above said testimony of the witnesses.

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

(RAJBIR SEHRAWAT)
JUDGE

24.05.2022
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No