

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

CWP-30190-2018

Date of Decision: 13.05.2022

The Divisional Forest Officer, Panipat

..... Petitioner

Versus

Sh. Tulsi Dass and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Harish Rathee, Deputy Advocate General, Haryana,
for the petitioner.

Mr. Dharmveer Phour
for respondent No.1.

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 award dated 31.03.2017 (Annexure P-3) passed by respondent No.2 and to the stay the said award, during the pendency of the writ petition.

Learned counsel for the petitioner-State has pointed out that for the same duration and for the same industrial dispute, the respondent-workman had sought reference to the Labour Court earlier as well. The said matter was referred to the Labour Court and the same was answered against the respondent-workman, vide award dated 27.02.2013, by holding that the respondent-workman had not even completed 240 days of service. Subsequently, for the same set of facts and for the same alleged duration of service, another reference was sought by the respondent-workman. The said reference has been answered in favour of the respondent-workman. It is

strange that despite the first award having been pronounced and published, the second award for the same duration of alleged service has been passed by the Labour Court. Whatever be the facts and circumstances leading to the passing of the said second award, the fact remains that the second award could not have been passed by the Labour Court; so long as the first award passed by the competent Labour Court regarding the same industrial dispute was in operation and legally in existence. It is not even the case of the respondent-workman that the first award was ever challenged before any Court and the matter was remanded to the Labour Court or that the respondent-workman was ever given any liberty by any Court to raise fresh dispute regarding the same duration of alleged service. Hence, the present award has to be set aside, being passed in a non-maintainable reference.

Otherwise also, a perusal of the award shows that in these proceedings as well, no cogent evidence had been led by the respondent-workman to show that he had completed 240 days of service in the preceding 12 calendar months. Instead, the Labour Court has resorted to the adverse inference and the uncalled assumptions by incorporating the concept of State being a welfare State. Needless to say on the aspect of compliance or non-compliance of the statutory provisions, the concept of welfare State is totally immaterial. The petitioner-State would have been responsible for any non-compliance of the statutory procedure if the matter was proved to be within the definition of 'retrenchment', irrespective of the fact whether the State is a welfare State or not. However, if the pre-conditions required for compliance of statutory provision under the Industrial Disputes Act is not

brought on record, then the State could not have been burdened with any extra responsibility simply for the reason that the State is suppose to be a welfare State.

In view of the above, this Court finds that the second award passed by the Labour Court is totally non-sustainable. Hence, the same is hereby set aside and the writ petition is allowed.

(RAJBIR SEHRAWAT)
JUDGE

13.05.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No