

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

206

CWP No.24065 of 2014 (O&M)
DATE OF DECISION : 31st March, 2022

**Bansal Iron Foundry, Shergarh Road, Kaithal
through its Proprietor/Partner Manish Bansal, S/o Sh. Sudesh
Kumar Bansal, R/o H.No.1243/11, Model Town, Kaithal
.... Petitioner**

Versus

**The Presiding Officer, Labour Court, Ambala & another
.... Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Sukesh K. Jindal, Advocate for the petitioner.

Mr. Satbir Rathore, Advocate for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is the petition filed by the petitioner under Articles 226 & 227 of the Constitution of India seeking issuance of writ in the nature of certiorari for quashing the award dated 25.07.2014 (Annexure P-8) passed by respondent No.1 being perverse, illegal and contrary to the facts and law; along with certain other prayers.

2. The brief facts giving rise to the present petition are that respondent No.2-workman claimed that he was engaged by the petitioner-firm as Foreman (Electric Motor Manufacturer) on 31.03.2010 and he continuously worked with the petitioner-firm upto 29.08.2011 at a salary of ₹4800/- per month. The work and conduct of the workman was totally satisfactory. However, the service of respondent No.2-workman was illegally terminated on 29.08.2011 without passing any written order

and without complying with the provisions of Section 25F of the Industrial Disputes Act. At the time of the oral termination of his service he had completed more than 240 days in service. Request was made to the petitioner-firm to reinstate the workman. However, the said prayer was declined. Accordingly, the labour dispute was raised with the authorities, which was ultimately referred to the Labour Court. The Labour Court has passed the award dated 25.07.2014 (Annexure P-8) impugned in the present petition, whereby the termination of service of the respondent No.2-workman has been held to be invalid and it has been ordered that respondent No.2-workman be re-instated with continuity of service and full back-wages; along with arrears @ 9% interest. It is the said award which has been challenged by the petitioner-firm.

3. The counsel for the petitioner has submitted that respondent No.2-workman worked with the petitioner-firm only up to 31.03.2010. Thereafter, since respondent No.2-workman had attained the age of superannuation, therefore, he voluntarily left the service and submitted his form for release of his provident fund. Accordingly the signed form for release of the provident fund was submitted by the workman. The workman was paid the amount of provident fund and; thereafter; he never worked with the petitioner-firm. Hence, it is submitted that as counted upto 29.08.2011, the workman had not completed 240 days in preceding 12 calendar months. Therefore, the petitioner-firm was under no legal obligation to follow the procedure prescribed for retrenching an employee. Hence, the award has been passed without any basis.

4. Referring to the material on record, the counsel for the petitioner has submitted that respondent No.2-workman had attained the age of superannuation. The document in the form of birth certificate was duly placed before the Labour Court. As per the said certificate as well; respondent No.2-workman had attained the age of 58 years. Hence, this circumstance also substantiates the fact that respondent No.2-workman himself had left the job; by taking the retirement. The counsel has further submitted that except the self-serving statement of respondent No.2-workman; there is nothing on record to even remotely suggest that the workman ever worked with the firm after 31.03.2010. The petitioner-firm had produced entire record of the establishment upto the month of August, 2011 before the Labour Court as Exhibit M-1 to M-5. Even that record does not show the workman to be employee of the petitioner-firm at the relevant time. Despite there being no evidence on the file to show the working of respondent No.2-workman with the petitioner-firm after 31.03.2010, the Labour Court has resorted to only arbitrary assumptions, not supported by any material, to the effect that since the factory of the petitioner-firm was having 27 machines, therefore, the same could not have been operated by 25 employees as was pleaded by the petitioner-firm, and, therefore, the petitioner-firm was not showing the complete record. The counsel has submitted that there is neither anything on record to show that the petitioner-firm was having 27 machines at that time nor to the effect that the petitioner-firm was having even 25 workmen. The counsel for the petitioner-firm has also submitted that

award is factually incorrect, insofar as it is recorded therein that muster rolls have not been produced by the petitioner-firm before the Labour Court. In fact, as mentioned above, the muster rolls for the relevant period were duly produced before the Labour Court. Hence, the award deserves to be set aside.

5. On the other hand, the counsel for the respondent No.2-workman has submitted that the correct facts had not been brought before the Labour Court. Since the petitioner-firm had withheld the relevant record, therefore, adverse inference has rightly been drawn by the Labour Court against the petitioner-firm. The respondent No.2-workman had duly worked with the petitioner-firm up to 29.08.2011. The workman appeared before the Labour Court as witness and proved the said fact. The workman was even put to lengthy cross-examination, however, nothing adverse to the claim of respondent No.2-workman could be extracted during the said cross-examination. Hence, it was duly proved that the workman had worked for more than 240 days before termination of his services. Qua the withdrawal of the provident fund, it has been reiterated by counsel for respondent No.2-workman that he was forced to sign the said forms for withdrawal of the provident fund. But even thereafter respondent No.2-workman continued to work with the petitioner-firm. Hence, the said fact is totally irrelevant for the purpose of decision of the present case. Qua the aspect of the age of superannuation of respondent No.2-workman; it has been submitted by counsel for respondent No.2 that there is no specified age of

superannuation in the factory of the petitioner-firm, therefore, the persons upto the age of even 75 years are continuing in the establishment of the petitioner. Hence; this fact cannot have any effect upon the case of respondent No.2-workman.

6. Having heard the counsel for the parties and having perused the record, this court finds substance in the argument raised by the counsel for the petitioner-firm. The uncontroverted record in the form of the birth certificate of respondent No.2-workman shows that he had attained the age of 58 years as on 31.03.2010. Therefore, the argument of the counsel for the petitioner-firm that it was respondent No.2-workman who had sought retirement, having attained the age of superannuation; gets credence. Moreover, the fact that respondent No.2-workman had withdrawn the provident fund amount, also confirms the fact that it was the retirement of the petitioner which led to his discontinuation as an employee of petitioner-firm. It is not even the case of the respondent-workman that he had ever written any letter or complaint to the provident fund authorities or to any other authority qua being forced to withdraw the amount of provident fund. Hence, the factum of final withdrawal of the provident fund amount, which is an incidence of the retirement, has also gone uncontroverted.

7. So far as evidence on file is concerned, the workman has not led any documentary evidence to show that he ever worked after 31.03.2010. Although he has made a statement to that effect before the Labour Court, however, the self-serving statement of respondent No.2-

workman, can not be taken as evidence of the fact of having worked with the petitioner-firm. The respondent-workman has not even examined any co-worker; serving or retired; from the same firm, to corroborate the fact that he was working with the petitioner-firm even after 31.03.2010. Moreover, the factum of engagement of respondent-workman with the petitioner-firm is a matter of documentary evidence. Since the fact is of documentary evidence and the same has also been produced by the petitioner-firm before the Labour Court, therefore, any oral evidence on the said aspect, shall, otherwise also, stand excluded. Hence, it is established that there is no evidence worth name to show that the workman had completed 240 days in 12 calendar months immediately preceding the alleged date of termination of his service. Rather the evidence on record shows otherwise.

8. So far as the assessment of the record by the Labour Court, is concerned, that is found to be more based on un-substantiated assumptions than the tangible material available on record. The counsel for the petitioner-firm is right in arguing that there is nothing on record to show that there were 27 machines with the petitioner-firm. Hence, any and all the assumptions, based on this fact, are also without any substance.

9. In view of the above, this court is of the considered opinion, which is supported by overwhelming evidence on file; that respondent No.2-workman had superannuated from the service with the petitioner-firm. The superannuation has been excluded from the definition of

retrenchment as provided under Section 2(oo) of the Industrial Disputes Act. Therefore, the petitioner-firm was not required to follow any formality or procedure prescribed for retrenchment of a workman.

10. In view of the above, the present petition is allowed and the award passed by the Labour Court is set aside.

11. All the pending application, if any, also stands disposed of accordingly.

31st 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>