

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

CWP-15624-2016 (O&M)
Date of decision :31.08.2023

BALBIR

...Petitioner

Versus

THE PRESIDING OFFICER, LABOUR COURT, AMBALA
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Viney Saini, Advocate
for the petitioner.

Mr. Parveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Balbir) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned Award dated 20.11.2015 (Annexure P-1) and also the Award dated 29.07.2010 (Annexure P-2) passed by the learned Labour Court, Ambala; whereby, the reference of industrial dispute raised by the petitioner regarding termination of his services, has been answered against him.

A further prayer has been made by the petitioner for directing the respondents No.2 to 4 (here-in-after referred to as 'the Management') to reinstate him in service with continuity and full back wages.

2. Briefly, the petitioner herein raised an industrial dispute by filing his claim petition before the learned Labour Court below on the plea that he was initially appointed as a Labourer on 01.07.1982 by the

respondent-Management in Fatehpur Beat on daily wages for preparing nurseries, making ridges for plantation of plants, doing earth work, filling polythene bags for sowing seeds etc. Petitioner claimed that he worked under various Forest Guards from time to time and he served the management uninterruptedly from 01.07.1982 till 01.11.2013, when his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (here-in-after called as 'the 1947 Act'). Petitioner claimed that he had completed more than 240 days' work in the year preceding his termination and he also fulfilled the conditions regarding regularization of his services in terms of Government policy; however, his claim was never considered. It was also stated by the petitioner that the Management has been committing un-fair labour practice by showing the petitioner working under some fictitious contractors, who had not obtained any registration certificate or licence under the Contract Labour (Regulation and Abolition) Act, 1970.

With the afore-said pleas, the petitioner sought reinstatement in service and other consequential benefits.

3. The afore-said claim of the petitioner was contested by the respondent-Management by raising certain preliminary objections regarding maintainability, *locus standi*, applicability of the provisions of the 1947 Act, suppression of material facts etc. A categorical stand was taken by the respondent-Management that there was no relationship of employee and employer between the parties and it was stated that after the year, 2002, the Forest Department did not maintain any muster rolls nor any seniority list of the labourers for doing the seasonal work through the contractors were maintained. It was also stated that the petitioner never completed continuous

service of 240 days in any calendar year. The other allegations of the petitioner were also controverted by the respondent-Management and prayer was made for dismissal of the claim petition.

4. From the pleadings of the parties, the following issues were framed :-

“1. Whether the termination of the services of workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service ? OPW

2. Whether the workman has no locus standi to file the present demand notice ? OPM

3. Whether the workman has not come clean hands and concealed the material facts from the Court? OPM

4. Whether the claim statement is not maintainable in the present form ? OPM

5. Relief.”

5. Upon considering the material/evidence available on the record, the learned Labour Court below rejected the claim of the petitioner, primarily taking into consideration that the petitioner had concealed material facts as regards the Award dated 29.07.2010 (Annexure P-2), which was also relating to the petitioner herein. In the said Award dated 29.07.2010 (Annexure P-2), the petitioner's claim was that he had worked with the respondent-Management from 01.07.1979 upto 31.03.2006 when his services were terminated. A perusal of the said Award (Annexure P-2) reveals that the petitioner had failed to prove that he had rendered continuous service under the Management for 240 days in twelve months preceding his termination; accordingly, the claim was rejected.

6. Apparently, the petitioner did not disclose the factum of the afore-said Award (Annexure P-2) passed against him and he proceeded to raise another industrial dispute by filing his second claim petition before the learned Labour Court below. It is not in dispute that the petitioner did not raise any challenge to the afore-said Award dated 29.07.2010 (Annexure P-2). Accordingly, the learned Labour Court below returned a finding that the said award (Annexure P-2) has already attained finality and therefore, the different plea taken by the petitioner-workman in the second claim petition that he was continuously working from 01.07.1982 upto 01.11.2013, cannot be accepted.

7. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition, challenging the impugned Award dated 20.11.2015 (Annexure P-1) along with the earlier Award dated 29.07.2010 (Annexure P-2).

8. As regards the challenge to the Award dated 29.07.2010 (Annexure P-2) is concerned, the same must fail as the petitioner never raised any challenge to the said Award (Annexure P-2) until the passing of Award dated 20.11.2015 (Annexure P-1). Rather the petitioner proceeded to raise another industrial dispute by filing his second claim petition before the learned Labour Court below by concealing the factum of earlier award and the second claim petition was also dismissed on 20.11.2015 (Annexure P-1).

9. Further, it is well settled that the limitation period as prescribed for filing of the Civil Suit is also applicable as far as the filing of writ petition is concerned. Since the earlier award was rendered on 29.07.2010 and the same is being sought to be challenged only now after passing of the second award dated 20.11.2015 (Annexure P-1) i.e. in the year, 2016, the

challenge to the said award being beyond period of three years, is clearly time barred and suffers from gross delay and latches. Additionally, claim of the petitioner against the respondent-Management had been declined vide Award dated 29.07.2010 (Annexure P-2) by holding that he had not completed 240 days' service in the twelve months preceding the date of his termination in March, 2006. Even the date of joining of service by petitioner under the respondent-Management was stated to be 01.07.1979, which is totally different from the stand taken in the second claim petition filed by the petitioner wherein he had stated that he had worked continuously from 01.07.1982 upto 01.11.2013. Therefore, petitioner's stand in second claim petition stood completely demolished in the face of the award dated 29.07.2010 (Annexure P-2).

10. A perusal of the instant writ petition would show that in para No.8 thereof, the petitioner has made the following averments :-

“8. That the learned Labour Court did not consider that the petitioner is a poor illiterate person. Petitioner worked with the management from 01.07.1982 to 01.11.2013. In between this period earlier also services of the petitioner was terminated by the respondent-management on dated 31.03.2006. Then petitioner challenged his termination before the Ld. Labour Court and the respondent-management had admitted in their reply that petitioner-workman was appointed as casual labour to meet the seasonal work of forestry activities. Then during the pendency of the case respondent-management took back the petitioner in service and he worked till 01.11.2013. So that he could not challenge the earlier dismissal order dated 29.07.2010 passed by the Ld. Labour Court, Ambala.”

11. The above extracted para would make it evident that the petitioner had tried to render justification for not challenging the earlier award dated 29.07.2010 (Annexure P-2) by submitting that he is a poor illiterate person and he worked with the Management from 01.07.1982 upto 01.11.2013 and in between this period, his services were terminated by the Management on 31.03.2006, which was challenged by him before the learned Labour Court below and during the pendency of the case, the Management had taken back the petitioner in service and he worked till 01.11.2013.

12. I have considered the afore-said plea of the petitioner; however I am not convinced with the same for the simple reason that in case, the petitioner had been taken back in service during the pendency of the first claim petition filed by him, then the first claim petition should have been disposed of in view of the said alleged fact that the petitioner had been taken back in service, whereas, the real fact is that the petitioner's claim was dismissed vide award dated 29.07.2010 (Annexure P-2), which was never challenged by him. Rather, the petitioner had concealed the Award dated 29.07.2010 (Annexure P-2) at the time of filing of the second petition. All the afore-said material facts have been conveniently concealed by the petitioner. It is well settled that whenever a litigant approaches the Court/Tribunal for redressal of his grievance then it is expected that he/she will approach the Court/Tribunal, not only with clean hands but also with clean mind, clean heart and clean objectives, failing which the litigant should be shown the exit door at the earliest point of time. Therefore, there is no manner of doubt that the petitioner had not approached the Court with clean hands and hence, he is not entitled for any relief.

13. Keeping in view the peculiar facts and circumstances of the instant case and considering the totality of circumstances, I find no merit in the instant writ petition and the same is, accordingly, dismissed.
14. All pending application/s, if any, shall also stand closed.

August 31, 2023	(HARSH BUNGER)
gurpreet	JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No