

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

**CR-3360-2022 (O&M)
Date of decision: 26.04.2023**

Mathura Prasad Sharma

...Petitioner

Vs.

M/s Sebro's Auto Private Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashwani Bakshi, Advocate,
For the petitioner.

Mr. Sumeet Jain, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 26.10.2021 (Annexure P-3) passed by Presiding Officer, Labour Court-II, Gurgaon (for brevity, 'Labour Court'), whereby application for additional evidence of petitioner-workman was dismissed.

2. Succinct facts first.

2.1. Petitioner's case before learned Labour Court was that he was appointed as Cashier with respondent-management on 15.10.2013. His brother, who was also working with respondent-management, died on 05.09.2014 while on duty and a claim was made by his LRs for compensation and other benefits admissible in law from respondent-management. However, as a counter-blast to the said claim, respondent-management terminated services of petitioner by refusing to take him back on duty on 01.10.2014 without disclosing any reason and without following the mandatory provisions of law.

2.2. While case of respondent-management before learned Labour Court was that it never terminated the services of petitioner-workman, rather it

was petitioner himself who submitted his resignation, which was duly accepted by the management and his full and final dues of Rs.26,300/- were paid vid cheque dated 26.11.2014. It was further the stand of respondent-management that petitioner was not a workman as defined in the Industrial Disputes Act, 1947 as he was working as an Accountant and was enjoying supervisory/managerial powers. Petitioner has not completed 240 days in employment of management.

2.3. On 14.08.2014, learned Labour Court framed the following four issues and put the onus of proof of issues No.2 to 4 exclusively on petitioner-workman:

- “1. *Whether the services of the workman have been terminated wrongly, illegally and unjustifiably by the management or else it is a case of self-resignation by the workman, if so to what effect? Onus on parties*
2. *Whether the petitioner is a workman under the definition of workman as defined u/s 2(S) of the I.D. Act? OPW*
3. *Whether the workman is not gainfully employed after his termination? OPW*
4. *Whether the workman has completed 240 days of continuous services? OPW*
5. *Relief.”*

2.4. Thereafter case was fixed for evidence of workman. Evidence of petitioner-workman was concluded on 17.02.2016 and evidence of management was finally closed on 10.12.2019 by learned Labour Court after it had availed about 15 effective opportunities. Case was then fixed for arguments for 20.01.2020 vide order dated 10.12.2019.

2.5. On 13.07.2021, petitioner-workman moved application (Annexure P-1) before learned Labour Court for additional evidence to prove completion of 240 days and also requested that onus of issues No.2 and 3 may be put on respondent-management. Vide impugned order dated 26.10.2021 (Annexure P-

3), the application was dismissed by learned Labour Court. Hence the instant petition.

3. Learned counsel for petitioner states that he does not press prayer for shifting of onus to prove issue Nos.2 and 3. He further points out that the second prayer in his application (Annexure P-1) was to seek permission to produce attendance and wages register of respondent-management for the period from 15.10.2013 to 30.09.2014. The latter prayer was not even considered by learned Labour Court.

3.1 Learned counsel for petitioner would further submit that petitioner had details of payment of salary to him by the Management and deductions made under different heads in 12 months preceding the date of termination of his services from which it was evident that he had completed 240 days of service with the management during those 12 months. However, he failed to summon the relevant attendance and wages register from the management, at the time affirmative evidence. Petitioner has to lead additional evidence to prove completion of 240 days as the onus to prove the same is on him, contends the learned counsel. Completion of 240 days is a mandatory pre-condition for claiming any relief by a workman alleging violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.

3.2. Elaborating further, learned counsel would argue that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner-workman may be permitted to lead additional evidence in the interest of justice and equity.

4. Per contra, learned counsel for the respondent vehemently opposes the prayer made and submits that impugned order has rightly been passed by learned Labour Court. Additional evidence cannot be allowed, at

this stage, when evidence of both the parties have been concluded, canvasses the learned counsel.

5. I have heard learned counsel for parties and perused the case file.
6. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading additional evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to lead additional evidence which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity to petitioner-workman to adduce additional evidence.
7. For the foregoing reasons, I deem it appropriate to grant one effective opportunity to petitioner to lead additional evidence. Respondent shall also be given opportunity to produce rebuttal evidence. To that extent, the impugned order is modified and the revision petition is allowed.
8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

26.04.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No