

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

LPA-751-2018 (O&M)

Reserved on: 24.01.2023

Pronounced on: 30.01.2023

Jaspal @ Yashpal

....Appellant

Versus

Maharaja Aggarsain Institute of Medical Research and Education,
Agroha, Tehsil & District Hisar and others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. H.C. Arora, Advocate for the appellant.

Mr. Raman B. Garg, Advocate and
Mr. Mayank Garg, Advocate for the respondents.

G.S. Sandhawal, J.

Present Letters Patent Appeal has been filed by the workman against the order dated 16.04.2018 passed by learned Single Judge in **CWP No.6479 of 2014 ‘Maharaja Aggarsain Institute of Medical Research and Education, Agroha and another Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another’.**

2. The learned Single Judge allowed the writ petition filed by the management and set aside the award dated 01.08.2013 (Annexure P-1) passed by the Labour Court and directed that the appellant-workman be paid a sum of ₹1 lakh and adjusted the amount which had already been paid vide the interim orders passed earlier. The reasoning given by the learned Single Judge was that since the workman had only worked for 215 days on daily wage basis preceding his date of termination and was working as Beldar-cum-Mali from 12.03.2006 to 12.12.2006, therefore, the period of 240 days was not made out since the holidays and weekly rest had also been wrongly counted by the Labour Court. Reliance was

placed upon the judgment of the Apex Court passed in **Workmen of American Express International Banking Corporation Vs. Management of American Express International banking Corporation, AIR 1986 SC 458** to come to the said conclusion.

3. Counsel for the appellant has submitted that the order of the learned Single Judge was not sustainable and submitted that the order of the Labour Court as such should not have been interfered with under Articles 226/227 of the Constitution of India.

4. We have heard counsels for both the parties. A perusal of the paper-book would go on to show that it was the case of the appellant-workman that he was employed on daily wage basis and due to the termination he had claimed the statutory protection of Section 25-F, 25-G and 25-H of the Industrial Disputes Act 1947 (for short '1947 Act'). Resultantly, he had filed a demand notice dated 11.06.2007 in support of his claim. He had appeared and given his statement. The record had also been produced by the Management which was in pursuance to an application filed by the workman. There was a categorical statement by MW1-Head of the Human Resources and Administration Department that the employee had only worked for 215 days and details had also been given alongwith the attendance register. The said fact was also noticed by the Labour Court, who held that the weekly rests were also to be included to the tune of 36 days and, therefore, by adding the same to the 215 days, it was held that he had worked for 251 days and had completed more than 240 days. Therefore, it was held that he was entitled for reinstatement as there was violation of Section 25-F of the 1947 Act.

5. However, it was held that the workman had not proved the fact that any other person was recruited by the Management after his termination and, therefore, Section 25-H was held not to be violated, but Section 25-G violation was proved on account of the fact that persons who had been employed later from June, 2006 to February, 2007 were in employment. Thus, it was held that he was entitled for reinstatement, but was denied the backwages.

6. We are of the considered opinion that keeping in view the above and the fact that the employment was for a short period of 9 months, the judgment of the Apex Court passed in **Bharat Sanchar Nigam Ltd. Vs. Bhurumal, (2014) 7 SCC 177** would come into play. The consistent view of the Apex Court is to grant compensation for short service, as has been noticed in **Haryana Urban Development Authority Vs. Om Pal, (2007) 5 SCC 742** wherein Rs.25,000/- was granted for the service of one year whereas in **Uttaranchal Forest Development Corporation Vs. M.C. Joshi, (2007) 9 SCC 353**, for a period of 2 years, a sum of Rs.75,000/- was granted. Similarly, in **Asst. Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh, 2013 (1) SCR 679**, the said view was followed while noticing that the service was of 8 months and thus, compensation of Rs.50,000/- was granted. Similarly, in **Management, Hindustan Machine Tools Ltd. Vs. Ghanshyam Sharma, 2018 (18) SCC 80**, for a period of one year, compensation of Rs.50,000/- had been granted. In **K.V.Anil Mithra & another Vs. Sree Sankaracharya University of Sanskrit & another, 2021 (4) SCT 415**, for a period of little over 4 years, amount awarded was Rs.2,50,000/- in

lieu of the reinstatement and backwages of 50% which was granted and accordingly, modified.

7. Resultantly, even if we take the case of the appellant that he had completed 240 days of service and there was violation of Section 25-G of the 1947 Act, still the said principle would come into play. Even otherwise as argued by the counsel for the respondent, the judgment of the Full Bench passed in **Executive Engineer, Public Health Division No.1, Panipat Vs. Sanjay Rana and another, 2014 (2) SCT 548** also answered the question that unless and until the daily wage is paid for the rest day, it cannot be counted towards computation of 240 days of continuous service to get the benefit under the provisions of Section 25F of the 1947 Act. The relevant part of the said judgment reads as under:-

“31. It is true that as per the provisions of Rule 23 of the Minimum Wages Rules, a workman is entitled to get weekly rest. However, until and unless it is proved on record that wages were paid for the said period the workman cannot get any benefit of unpaid day of rest to get benefit under the provisions of Section 25F of the Act.

32. In Raghbir Singh's case (supra), a Division Bench of this Court to opine that the unpaid Sundays and holidays can be included in 240 days for the purpose of getting benefit under Section 25F of the Act has basically relied upon the provisions of rule 23 of the Minimum Wages Rules and observed as under:

“We have perused the Rule 23(4) of the Punjab Minimum Wages Rules, 1950. We are satisfied that in spite of the fact that the respondent – workman rendered only 26 days service in the 8 calendar months depicted in the compilation extracted above, he was liable to be paid for four rest days in each of the said months, under Rule 23(4) (i.e. 1 day for rendering service for 5 days), subject to the condition that the respondent -workman was employed in a “Scheduled

Employment.” In order to substantiate that the respondent -workman was engaged in a scheduled employment, our attention has been invited to the Schedule appended to the Rules, wherein, the Public Works Department (Public Health) is included. As such, we have no hesitation in arriving at the conclusion that the respondent – workman was paid and/ or liable to be paid for the rest days during the months he has rendered service with the petitioners-management.”

33. Then by placing reliance upon the ratio of Workmen of American Express International Banking Corporation 's case (supra), it was further observed as under:

“We have no hesitation in arriving at the conclusion that the number of rest days for which the employee had been paid, is liable to be included in the number of working days while calculating 240 days service in terms of Section 25-B of the Act.”

34. A reading of the above paragraph indicates that it was presumed by the Division Bench that the payment made for a month shall also include four unpaid Sundays. In that judgment, it was not noticed that so far as daily wager is concerned, he gets his payment on completion of each day's work. His employment is virtually contractual in nature and unless agreed upon or there is any compulsion of law, the daily wager will not get payment for unpaid days.

35. The Hon'ble Supreme Court in Workmen of American Express International Banking Corporation 's case (supra) has also clearly stated that the expression the actual working days shall also include those days during which the workman was in employment and was paid wages. The language of the Statute coupled with further clarification by the Supreme Court in the above case makes the position very clear and as per our view needs no further explanation.

CONCLUSION:

36. In view of the findings given earlier, I am of the opinion that the above said opinion of the Division Bench in Raghbir Singh's case (supra) was not correct. Accordingly it is held that a daily wager may be entitled to a rest day, unless and until he is paid for the said day, it cannot be counted towards

computation of 240 days of continuous service to get benefit under the provisions of Section 25F of the Act.”

8. The Management as such had never admitted this fact and have categorically deposed regarding the engagement being less than 240 days, which was in form of daily wage.

9. In such circumstances, we are of the considered opinion that the learned Single Judge was well justified in coming to the conclusion that the award passed by the Labour Court suffered from an error of law, as the benefit of statutory protection could not be given in the absence of 240 days having been completed and there was nothing on record to show that he had been paid for holidays also. Therefore, the order of the Labour Court had been rightly interfered with by the learned Single Judge, as it suffered from a patent illegality.

10. Keeping in view the above and the fact that a sum of ₹1 lakh was deposited in installments and had already been received by the appellant-workman, we do not find any ground as such to interfere in the well reasoned order passed by the learned Single Judge. Resultantly, there is no merit in the present appeal and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

January 30, 2023
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No