

239

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19027-2016

Date of decision : 12.09.2023

Debo Devi

..... Petitioner

Versus

The Presiding Officer, Labour Court, Ambala and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Jagram Singh Cooner, Advocate
for the petitioner.

Mr. Satish Singla, AAG Haryana.

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HARSH BUNGER, J.

1. Petitioner (Debo Devi) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the Award dated 18.03.2016 (Annexure P-1), passed by the Labour Court, Ambala (respondent No. 1 herein). Further direction has been sought for directing respondents No. 2 and 3 (Management) to reinstate the petitioner-worker in service with continuity of service and full back wages.

2. Briefly, the petitioner-worker joined the services of respondents No. 2 and 3 (Forest Department, Haryana) for plantation and maintenance of plants in Jhansa Beat in the year 1988 and she claimed to have continued to work as such till 01.01.2012 when her services were illegally and arbitrarily terminated in violation of the provisions of Industrial Disputes Act, 1947 (hereafter referred to as '1947 Act'). Thereafter, the petitioner-worker served a Demand Notice (Annexure P-2), seeking reinstatement with full back wages

and continuity of service and on failure of the conciliation proceedings, the matter reached before the learned Labour Court, Ambala where the petitioner-worker submitted her claim statement, which was contested by respondent-Department by filing its reply.

3. The Labour Court, after considering the pleadings of the respective parties as well as evidence placed on record, decided the claim statement of the petitioner-worker, vide Award dated 18.03.2016 (Annexure P-1) whereby the claim of the petitioner-worker was rejected.

4. In view of the aforementioned circumstances, the petitioner-worker has filed the instant writ petition before this Court.

5. Learned counsel for the petitioner-worker submits that the petitioner-worker joined the services of respondent-Department in the year 1988 and she had been performing her duties to the best of abilities and there was no complaint of any kind against her. It is submitted that the post against which the petitioner-worker was performing her duties was of permanent nature and same is still in existence. The petitioner-worker was being paid her salary through bills and on muster rolls. The petitioner-worker is stated to be working under the supervision of guard Lalit Kumar Sharma and Sandeep Kumar Saini. It is contended that the services of the petitioner-worker were terminated on 01.01.2012 without any reason. It is submitted that the petitioner-worker had completed more than 240 days of work during the preceding 12 months from the date of termination of her services. However, respondent-Department neither served one month notice nor paid one month salary in lieu of the notice and not even paid any retrenchment compensation to

the petitioner-worker before terminating her services which was in violation of Section 25-F of 1947 Act.

Learned counsel for the petitioner-worker further submits that respondent-Department retained junior most person while terminating the services of the petitioner-worker which was also in violation of Section 25-G of 1947 Act. Learned counsel for the petitioner-worker further submits that the Labour Court, Ambala has failed to consider and appreciate the pleadings as well as evidence placed on record and wrongly passed the Award, which is unsustainable in the eye of law. Accordingly, it is prayed that the instant writ petition be allowed and appropriate directions be issued to respondent-Department to reinstate the petitioner-worker with full back wages and continuity of service.

6. The aforesaid claim of the petitioner-worker has been contested by respondent-Department by filing its written statement.

7. Learned State counsel has submitted that respondent-Department engaged only casual labourers and the said contract continued upto 31.03.2004. Learned State counsel further submits that the work was carried out by Forest Contractors from 01.04.2004 and same continued upto 31.03.2014 and presently, the plantation and maintenance work is being carried out through Village Forest Committees. It is contended that as per Rule 15.24 (5) of Haryana Forest Manual, Volume-II, the old records of Kurukshetra Forest Division has been weeded out. It is further contended that the petitioner-worker had no locus standi to file and maintain the claim statement as the petitioner-worker has not worked with respondent-Department even for a

single day since from year 2004. It is also contended that the petitioner-worker does not fall under the definition of 'workman' as per provisions of 1947 Act. It is pleaded case of respondent-Department that the Commissioner and Secretary to Government of Haryana, Forest Department, vide his letter dated 22.10.2003, had issued instructions/directions to introduce rate contract policy in Haryana Forest Department. Accordingly, the Contract System came into force from 01.12.2003. It is submitted that as per available record with respondent-Department, neither the petitioner-worker was engaged as a workman in the Jhansa Beat for the purpose of plantation in the year 1988 nor her services were dis-engaged on 01.01.2012. It is also stated that no record for the period from 1988 to 31.03.2005 is available with respondent-Department as the old record upto 31.03.2005 of Kurukshetra Forest Division has been weeded out, as per rules. It is contended that there is no documentary evidence produced by the petitioner-worker to show that she had worked for the period from 1988 to 01.01.2012 with respondent-Department, whereas respondent-Department had produced documentary evidence to show that the petitioner-worker had not worked even for a single day.

8. Learned State counsel submits that the Labour Court, Ambala has rightly appreciated the evidence available on record and the claim statement of the petitioner-worker has been rightly rejected and there is no scope for any interference in the said Award. Accordingly, it is submitted that the instant writ petition is bereft of any merit and the same is liable to be dismissed.

9. I have heard learned counsel for the respective parties and with their able assistance, have perused the paper book.

10. It is pleaded case of the petitioner-worker that she was employed with respondent-Department in the year 1988 for plantation and maintenance of the plants in Jhansa Beat and she claims to have worked there without any break upto 01.01.2012 when her services were terminated in violation of provisions of 1947 Act. It is also pleaded case of the petitioner-worker that she had worked more than 240 days in the year immediately preceding the date of her termination and her services have been wrongly terminated without following the provisions of 1947 Act and without paying the retrenchment compensation.

11. On the other hand, respondent-Department has totally denied that the petitioner-worker has even worked for a single day with respondent-Department. Thus, primarily it was for the petitioner-worker to prove the relationship of employee and employer between the petitioner-worker and respondent-Department and also to prove that she had worked for 240 days in the calendar year immediately preceding the date of her termination. In this regard, the Labour Court has returned the following findings :-

“9. In the instant case, the workman has failed to prove her case by producing any documentary evidence i.e. salary slip, appointment letter, attendance register or any other document except making her oral statement that she had worked for more than 240 days in every calendar year since 1988 till her termination on 1.1.2012. Filing of an affidavit is only her own statement in her favour and that cannot be regarded as sufficient evidence to come to the conclusion that she had in fact worked for 240 days in a year. Whereas MW1

Shamsher Singh has categorically stated on behalf of the management that the applicant never worked with the management even for a single day and there is no relationship of employee and employer between the applicant and the management. It is also the specific stand of the management that the work was carried out through the Forest Contractors from 1.4.2004 to 31.3.2014 and presently the work is being carried out through Village Forest Committees. It is further the stand of the management that after the introduction of the contract system in the Forest Department, the applicant, who was earlier simply working as a casual labourer, left the work of her own on 1.4.2004 and thereafter she did not work even for a single day during the past ten years.

10. At this stage, the learned AR appearing on behalf of the workman Sh. Sanjeev Gawri has, however, tried to convince this Court that an adverse inference may be drawn against the management because it has failed to produce the record of the attendance and wages of the workman as well as the record of the seniority list of the daily wagers on the application filed by the workman in this behalf on 19.2.2015. To buttress his submissions, the learned AR has also relied upon the cases of Punjab State Forest Department Vs Presiding Officer, Labour Court, SCT 2010 (1) 667; and Director Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda 2010 (2) RSJ 184. I regret my inability to

accept these submission of the learned AR. The authorities relied upon by the learned AR are not applicable to the facts of the present case and are on different footing. The Hon'ble Supreme Court in Municipal Corporation, Faridabad Vs Siri Niwas (2004) 8 SCC 195, M.P. Electricity Board vs Hariram (2004) 8 SCC 246; and Manager, Reserve Bank of India, Bangalore Vs. S. Mani, 2005 (2) S.C.T. 404 has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it. As stated earlier, it is the specific case of the management that the claimant never worked with them and the old record of Kurukshetra Forest Division has been weeded out as per rule 15.24 sub order 5 of Haryana Forest Manual Volume-II. A perusal of the office order no. 148 dated 14.1.1997 Ex.MW1/1 shows that the old record from the year 1988-89 to 31.1.1993 has been weeded out and the complete list of vouchers which have been weeded out have also been attached therewith. Similarly, the office order no. 170 dated 11.3.2008 passed by Deputy Conservator of Forests, Kurukshetra Ex.MW1/2 would reveal that the record from 1.2.1993 to 31.3.2003 has been weeded out and office order no. 173 dated 14.3.2008 Ex.MW1/3 would reveal that the record from 1.4.2003 to 31.3.2005 has also been weeded out. Alongwith both the said orders, the list of vouchers and the muster rolls which have been weeded out have also been attached. It may also be noted here that the

management has specifically pleaded that after the introduction of the contract system in the Forest Department w.e.f. 1.4.2004, the applicant never worked with the management even for a single day. In these circumstances, no adverse inference can be, therefore, drawn against the management, as contended by the learned AR appearing on behalf of the management. As such the workman in the present case is not entitled to get any kind of relief under Section 25-F of the Act in view of the fact that she has miserably failed to prove that she had worked for 240 days continuously with the Management in the preceding 12 calendar months from the date of termination. Besides this, the claimant has also failed to prove that there has been any violation of the principle of “last come first go” as incorporated in Section 25-G or of the provisions contained in Section 25-H of the Act. In her demand notice, the workman could not specify the names of the persons who had been allegedly retained in service at the time of her alleged termination as also of the persons who were alleged engaged later on by the Management. On the other hand, the Management has specifically denied the averments of the workman in this regard. Accordingly, this issue is decided against the workman.”

12. A perusal of the aforesaid findings returned by the Labour Court would manifest that the petitioner-worker had failed to prove her case by producing evidence in the form of salary slip, appointment letter, attendance register or any other document apart from her oral statement that she had

worked for more than 240 days in the last calendar year immediately preceding the date of her termination. It is a well settled law that self-serving statement of the petitioner-worker to prove the relationship of employee and employer and also to say that the petitioner-worker had worked for more than 240 days in the last calendar year, would not suffice. In this regard, reference can be made to the judgment of Municipal Corporation Versus Siri Niwas, 2004 (4) SCT 211.

13. On a pointed query put to the learned counsel for the petitioner-worker to refer any document/evidence to prove the relationship of employee and employer and also to indicate that the petitioner-worker had worked for 240 days with respondent-Department, learned counsel for the petitioner-worker has fairly contended that there is no such document.

An argument is sought to be raised that respondent-Department has not produced the relevant record and thus, an adverse inference is required to be drawn against it.

However, I am not convinced with the argument of the learned counsel for the petitioner-worker. It is a well settled law that in order to draw an adverse inference, firstly, the petitioner-worker is required to at least prima facie lay foundation of her case and also plead and prove that the relevant material has been suppressed by respondent-Department, which in the instant case, is apparently lacking. The Apex Court in R.M. Yellati v. The Assistant Executive Engineer, 2005 (4) SCT 695 has observed as under :-

“ *The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workwoman will not suffice in the matter of*

discharge of the burden placed by law on the workwoman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.”

14. In view of the aforesaid discussion, I do not find any merit in the instant writ petition and same is accordingly dismissed.

15. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

12.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No