

CWP-11770-2005 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CWP-11770-2005 (O&M)
Decided on: January 12, 2024

State of Haryana

...Petitioner

Versus

Hardwari Lal (deceased) through LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Satish Singla, Assistant Advocate General, Haryana,
for the petitioner.

Mr. Ajay Chaudhary, Advocate,
for respondent No. 1(i).

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SANJAY VASHISTH, J.

CM-2412-CWP-2018:

This is an application filed by respondent No. 1(i), for fixing an actual date of hearing of main writ petition, i.e. CWP-11770 of 2005.

Notice of the application.

Mr. Satish Singla, Assistant Advocate General, Haryana, who is present in the Court, accepts notice.

Counsel representing both the sides have no objection, if the main writ petition is decided by this Court, today itself.

Accordingly, civil miscellaneous application stands disposed of. Main writ petition, i.e. CWP-11770-2005 is taken on Board for today itself, for final disposal.

CWP-11770-2005:

1. The short issue involved in the present writ petition, filed under Articles 226/227 of the Constitution of India, is that whether an adverse inference can be drawn by the Industrial Tribunal-cum-Labour Court, against the management for not producing the relevant records before it.

2. Present writ petition has been directed by the State of Haryana, against the award dated 19.12.2001, passed in Reference No. 132 of 1998, by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak (hereafter referred to as 'the Tribunal'), whereby reference referred under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the Act'), has been answered in favour the workman – Hardwari Lal, by directing that he be reinstated on his previous post with continuity of service and 70% back wages from the date of demand notice dated 29.10.1997.

3. Facts in brief are that workman raised an industrial dispute claiming that he was appointed by the management on daily wage basis in the year 1977. On 17.03.1995, he was not allowed to perform his duties and as such his services were terminated without assigning any reason, in violation of the provisions of Section 25-F of the Act, despite the fact that he had completed 240 days of his service during a calendar year. Accordingly, Reference No. 132 of 1998, was referred to the Tribunal for its adjudication.

4. In the written statement, management took the plea that workman actually worked from the month of October 1988 upto the month of December 1994, subject to availability of work from time to time. He was never appointed on daily wage basis. His service could not be

regularized as he could not complete five years service upto 31.03.1993. It was also denied that workman had completed 240 days of his service during a calendar year. It is also pleaded that workman himself left the job. Thus, dismissal of the claim statement was prayed for.

5. After completion of the pleadings, learned Tribunal found that workman remained in the employment of the management on daily wage basis. While dealing with the status/relation of the parties as employee and employer, learned Tribunal held that one Ramesh Kumar, Clerk, when appeared in the witness box as WW-2, has stated that service record from the year 1977 upto 31.03.1998 has been weeded out and is not available with the management. Said witness also stated that few muster rolls were destroyed during the flood in the year 1995 and due to this reason he could not bring muster rolls from January 1994 upto August 1994. Ramesh Kumar (WW-2) could bring muster rolls for the month of February 1993 and two muster rolls of the year 1992 and one muster roll of the year 1990-91. However, he specifically stated that remaining record is not available with the management.

6. Another witnesses, namely, Daya Nand, Forest Range Officer, when appeared as MW-1, stated in his deposition that he could not bring muster rolls from the year 1988 upto the month of March 1995, as that record has been sent to other cases.

7. In this situation, learned Tribunal has drawn an inference that the management could not produce service record of the workman from January 1994 to August 1994, despite the fact that the workman made efforts

and summoned the concerned clerk from the office of the management with record. Thus, learned Tribunal concluded that workman had worked with the management from the month of April 1994 to August 1994 and completed 240 days of service before the date of termination during a spell of 12 calendar months.

8. Since the record from 1977 to 1988 was not produced by the management on the pretext of weeding out of the same, learned Tribunal returned a finding by holding that it was the responsibility of the management to preserve the service record, and due to non-production of the service record for the said period, an adverse inference can be taken against the management presuming that the workman worked continuously from 1977 to 1988.

9. Other than this, learned Tribunal also found that there was non-compliance of the provisions of Section 25-F of the Act, inasmuch as, the management was required to give one month's notice indicating the reasons for retrenchment or to make payment of the salary for the period of notice and to pay retrenchment compensation in case the management wanted to retrench the workman. Admittedly, neither any notice was served nor salary regarding period of notice was paid or any retrenchment compensation was paid to the workman.

10. Even the principle of '*last come first go*', was also not adhered to by the management because it has come on record in the deposition of Daya Nand (MW-1) that Ramta and Lali, who were junior to the workman, were still working with the management. Thus, learned Tribunal held that

there was violation of the provisions of Section 25-G of the Act.

11. Challenging the said findings, present writ petition has been filed by the State of Haryana primarily asserting that an adverse inference could not have been drawn against the petitioner-management for non-production of record on account of the express stand adopted by it before the Tribunal, i.e. record from 1977 to 1988 had been weeded out and further that some of the muster rolls were destroyed during the floods in the year 1995.

12. While admitting the writ petition, vide order dated 01.08.2005, a Division Bench of this Court has stayed payment of back wages, as ordered by the Tribunal. Thereafter, when the matter came up for hearing on 21.04.2018, it was pointed out by learned counsel for the workman that during pendency of the present petition, workman was taken back to duty. However, the workman – Hardwari Lal had expired on 28.09.2010, leaving behind his widow as his Legal Representative, who has been brought on record.

13. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

14. Answer to the short issue as noticed in the opening para of this judgement, is no longer *res integra*, and this Court is guided by the law laid down by this Court (Punjab and Haryana High Court) in the case of **The Divisional Forest Officer (Social Forestry Project), Bhiwani, now the Divisional Forest Officer (Territorial), Bhiwani v. Smt. Roshni Devi and another**, 2010 (4) S.C.T. 271 : Law Finder Doc Id #215465, wherein in para Nos. 5 and 6, following observations have been authored:-

“5. The contention of counsel for the petitioner/Management that the adverse inference can only be drawn against the Management, if the Management fails to produce the relevant records before the Labour Court cannot be accepted in the case in hand. The Worklady being a daily wager was neither issued appointment letter nor termination letter. The Management is the custodian of the records. The onus to prove that the Worklady had completed more than 240 days in service in the 12 preceding months from the date of her termination is on the Worklady and for discharging that onus, the Worklady was fully dependent on the Management for production of the records. She had, therefore, moved an application before the Labour Court, calling upon the Department to produce the relevant records, which were spelt out in the said application. The said application was allowed by the Labour Court and the records were summoned. Shri Ramesh Kumar/WW-2, Clerk, o/o Divisional Forest Officer (Territorial), Bhiwani, initially appeared on 10.03.2006, when he stated before the Labour Court that he had not brought the complete summoned records because the records have been sent to other courts in cases and he would produce the complete records on the next date of hearing. Accordingly, examination-in-chief of the Witness was deferred to 13.11.2006. Shri Ramesh Kumar, appeared as a witness (WW/2) on 13.11.2006 and in examination-in-chief, he had deposed as follows:-

“xxxxx I have not brought the muster rolls and muster roll Issue register from 1/99 to 12/99. These muster rolls are not available. Therefore, I have not produced this record in future.”

As per contention of the Worklady, her services were terminated on 31.12.1999. Thus, 12 preceding months, which were relevant for proving as to whether the Worklady had worked with the Management for more than 240 days in the 12 preceding months was from January, 1999, to December, 1999. These records were not produced by Shri Ramesh Kumar (WW-2), Clerk, o/o Divisional Forest Officer (Territorial), Bhiwani, who had been summoned by the Court on an application moved by the Worklady to produce the records. Not only did he state that he has not brought the muster rolls and muster roll issue register from January, 1999, to December, 1999, as the same were not available, rather he had further stated that he would not be able to produce the same in future as well. In such a situation where, although, on an application moved by the Workman/Worklady, a witness is called for production of records and who deposes on the basis of available records, it cannot be said that he would be deposing as an interested

witness as far as the Workman/Worklady is concerned because he is not making a statement before the Labour Court on the basis of his personal knowledge, but on the basis of the records. When he states something on the availability or non availability of the records, there is no reason or justification why the Labour Court would not take it to be correct, when the same has not been contested or rebutted by the Management. Adverse Inference was not drawn because witness deposed for the Worklady or for the Management, but it was because of non production of the records, which has further been stated to be not available and cannot be produced in future. In these circumstances, the contention of counsel for the Management that adverse inference can only be drawn in case the Management Witness fails to produce the records, cannot be accepted and is hereby rejected.

6. *The records were summoned as the onus was on the Worklady to prove her assertion that she had completed 240 days in service in the 12 preceding months from the date of her termination and it would be her responsibility to prove the same, therefore, she made an application for production of the records and if the official, who is summoned to produce the records in possession of the Management, does not produce the same and further states that it is not available and will not be available in future as well, adverse inference which is drawn by the Labour Court cannot be said to be without any basis or not in accordance with law. The adverse inference drawn by the Labour Court in the given facts and circumstances of the case is fully justified and does not call for any interference by this Court.”*

Similar is the ratio of judgement rendered in the case of

Ambika Prashad v. Punjab Urban Planning and Development

Authority, Chandigarh, 2001(3) S.C.T. 1132 : Law Finder Doc Id #

11129, and the observations made in paragraphs Nos. 3 & 4 thereof, reads as

under:-

“3. *The payment and attendance registers, and logbook could have thrown light on the issue in dispute as to whether the workman had worked for the period as alleged. It is not open for the person having best evidence, to dodge the order of the Court and then to say that the burden of proof is on the other side. In case of **Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others**, AIR 1968 Supreme Court 1413, it has*

been observed by the Supreme Court that a person in possession of the best evidence has to produce the same and if not produced adverse inference can be drawn against the said party irrespective of the fact that onus of proof does not lie on him and that he was not called upon to produce the same. This principle directly applies to the facts of the present case and adverse inference can be drawn against the respondent. Therefore, there is no reason as to why it should not be hold that the petitioners have completed 240 days of services as alleged by them.

4. *In these cases, apart from not producing the best evidence, themselves, the respondents have chosen to defy the orders of the Labour Court also when the Labour Court asked the evidence to be produced. Therefore, these cases are on much better footing than that of Gopal Krishnaji Ketkar case (supra)."*

15. If the ratio of the said judgements is applied to the facts and circumstances of the present case, alongwith specific denial of not producing the summoned record for the relevant period i.e. from 1977 to 31.03.1998, same is in conformity as also at equal pedestal.

16. Once, the record for a specific period has been summoned in regard to the pleaded facts in the claim statement, burden shifted heavily on the management to produce the summoned record of the questioned period. To discharge duty, some sort of evidence in regard to the daily wage appointment of the workman and payment of salary to him, could have been explained, had the record, if any, been produced by the management at the time of evidence to be led by it. Strangely, the record pertaining to the crucial period was neither produced by Ramesh Kumar, Clerk (WW-2) nor by Daya Nand, Forest Range Officer (MW-1) at the time of leading of evidence by them. Further, no plausible reason is forthcoming for non production of the summoned record by the management, except a bald oral

statement that the relevant record was weeded out or destroyed in floods. No documentary evidence in the shape of any order regarding weeding out of record or detail of record destroyed in alleged floods, has been produced by the management. Rather, the deposition of aforementioned official witnesses is self contradictory, inasmuch as, contrary to the statement of Ramesh Kumar, Clerk (WW-2), in his deposition Daya Nand (MW-1) stated that **he could not bring muster rolls from the year 1988 up to the month of March 1995 as that record has been sent in other cases.**

17. In a recent judgement passed in the case of **Smt. Krishna v. Presiding Officer, Labour Court, Rohtak and others** (CWP No. 17472 of 2014, decided on 11.01.2024), this Court also observed that “*the enactment of the Industrial Disputes Act, 1947, is not to debar poor labourers/workmen from their lawful right, who fight for their livelihood despite of the uncommon circumstances and poor health condition in most of the cases. Even such a legislation is framed with an object to extend all possible relief/benefits which are made out under the law.*”

18. Thus, in view of the observations made hereabove, this Court has no hesitation to hold that allowing of the reference/claim statement of the workman by the learned Tribunal, by way of impugned award dated 19.12.2001, does not suffer from any legal infirmity, warranting inference by this Court. In the absence of non-production of the record, learned Tribunal has rightly drawn an adverse inference against the management, to come to the conclusion that the workman was working under the management and he was illegally terminated from service without compliance of the provisions

of the Act, more in specific, provisions of Section 25-F of the Act.

19. As a sequel to the above discussion, present writ petition fails being devoid of any merit, and the same is dismissed.

20. Needless to say that since payment of back wages to the extent of 70%, as awarded by the learned Tribunal, was stayed by a Division Bench of this Court, vide order dated 01.08.2005, the petitioner-management shall take necessary steps to make payment of the same to the widow of the workman, who has been brought on record as Legal Representative, within three months from today.

21. Registry is directed to send a copy of this judgement to the learned State counsel for onward transmission to the concerned authorities, for compliance within time bound manner.

However, there shall be no order as to costs.

(SANJAY VASHISTH)
JUDGE

January 12, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes / No
Whether reportable?	✓ Yes / No