

CWP-27293-2013

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

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**CWP-27293-2013
Decided on: January 25, 2024**

Jaipal

...Petitioner

Versus

Industrial Tribunal-cum-Labour Court, Rohtak and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Nitin Rathee, Advocate,
for the petitioner.

Mr. Satish Singla, Assistant Advocate General, Haryana.

SANJAY VASHISTH, J.

1. Present writ petition has been directed by petitioner – Jaipal (hereafter referred to as, ‘the workman’) against the award dated 08.08.2013, passed in Reference No. 464 of 2002, 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 against the workman.

In the award it has been broadly observed that the workman has neither proved completion of service of 240 days in the preceding one year prior to his termination or in any other calendar year, and except of the statement of his own, no other evidence has been led by him. It is also observed in paragraph No. 10 of the award that respondent No. 2 – The Divisional Forest Officer, SF Division, Rohtak (being Management), has

also failed in leading any evidence in support of the stand taken by it.

2. Pledged case of the workman is that he worked in the office of the Divisional Forest Officer, Rohtak, on daily wage basis from August 1979 to August 1998. Without issuing any notice, he was ousted from the job and, thus, there is violation of the provisions of Section 25-F of the Act. Demand notice was issued on 20.12.2001, and after terming it to be an issue involving “*industrial dispute*”, was referred to the Tribunal for its adjudication, vide Reference No. 464 of 2002, under Section 10(1)(c) of the Act.

3. While challenging the findings recorded by the Tribunal, learned counsel for the workman relies upon the observations made in paragraph Nos. 10 and 11 of the impugned award, and submits that admittedly prime reason of answering of the reference against the workman is that there was no evidence available on record, as none of the parties adduced any material evidence for adjudication of the dispute. Findings given by the Tribunal in paragraph Nos. 10 and 11 of the award are reproduced as under:-

“10. No doubt, the respondent/ management failed to lead any evidence in support of their claim but still the aforesaid position does not help to the claim of the petitioner/workman with respect to his entitlement for re-instatement with continuity of service and back wages. It is settled proposition of law that to claim the benefit under Section 25-F of the Act, it was for the petitioner/workman to prove that he has continuously worked for more than 240 days during the last calendar months before the date of his termination i.e. August 1998, but the petitioner/workman has miserably failed to prove the same by way of leading cogent evidence. The oral and bald statement of the petitioner/workman cannot be relied upon in the absence of any supportive evidence. Moreover a perusal of the record shows that the alleged oral termination of the petitioner/workman is of

August 1998 and in such circumstances, there is nothing on the file except the self serving statement of WW-1 Jai Pal. In the authority Range Forest Officer Versus S.T. Hadimani, 2002(3) SCC, 25 the Hon'ble Supreme Court has laid down that mere filing of affidavit by the workman, being only his own statement in his favour, cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, infact, worked for 240 days in a year.

11. Thus as consequence to the above discussion, this court is of the considered view that the workman has failed to prove this fact that the workman had rendered service for 240 days prior to his termination and his services have been illegally terminated by the respondent/management and findings under the aforesaid issue are accordingly returned against the workman and in favour of the respondent/ management.”

4. While challenging the impugned award, Mr. Nitin Rathee, learned counsel for the workman, refers to the application dated 16.08.2005 (Annexure P-5), which was filed by the workman before the Tribunal, for summoning of the witness. Contents of the said application are reproduced hereunder:-

“Before the Presiding Officer, Labour Court, Rohtak

Jaipal Vs. D.F.O. (Territorial)

Application for summoning the witness.

Hon'ble Sir,

The applicant/workman respectfully submits as under:-

1. That the above noted reference is pending before this Hon'ble Court and the same is fixed for 18.11.2005 for the evidence of the workman.

2. That the applicant/workman to summon the following witnesses:-

a) The concerned clerk of the office of D.F.O. (T), Jhajjar alongwith the Muster Role for the month of August 1979 to August 1998 pertaining to the services record of Jaipal s/o Sh. Hazari r/o Village Kunjiya Teh. & Distt. Jhajjar.

It is therefore respectfully prayed that the Hon'ble Court may kindly be summoned the witness as mentioned in para no.2 of the application and the applicant/workman may kindly be allowed to deposit the witness expenses.

*At Rohtak
Dated: 16.8.2005*

*..Applicant/Workman
Jaipal s/o Hazari
r/o Village Kunjiya Teh.
& Distt. Jhajjar”*

5. Further relies upon the order dated 05.03.2010, passed by the Tribunal, which is appended with the present petition also, by annexing copy of the summon alongwith gist of the order, and same reads as under:-

“ *SUMMONS TO WITNESS*

*ORDER XVI RULE 1105 OF THE CODE OF CIVIL
PROCEDURE 1970 BEFORE THE PRESIDING OFFICER,
LABOUR COURT, HARYANA, ROHTAK*

Dasti

Ref. No. 464/2002

Sh. Jaipal V/s M/s D.F.O. (Territorial) Jhajjar

To

*Concerned Clerk of the Office D.F.O. (T)
Jhajjar office at Johara Bagg Jhajjar
No. 298 Date 5.3.10*

Whereas your attendance is required for evidence on behalf of the workman management in the above noted case. You are hereby directed to appear before this court on 19.4.10 at 9:00 A.M. in the O/o The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and bring with you the record mentioned below.

You will be paid your expenses after your evidence before the court immediately. If you fail to comply with this order without any lawful excuse, you will subject to the consequences of Non-attendance as laid down in the rule 12 of order of the Code of Civil Procedure.

Given under my hand and seal of this court this 5.3.10

Summoned Records:-

*Concerned Clerk office
of the D.F.O. (T) Jhajjar
alongwith Muster Role from
Aug 1979 to Aug
1998 pertaining to the
service record of Jai Pal
s/o Hazari R/o Vill.
Kunjiya Teh. & Distt. Jhajjar
(Through Civil Nazir
Jhajjar)”*

*Sd/- Reader
For Presiding
officer, Labour
Court, Rohtak*

6. Learned counsel for the workman, thus, submits that despite of a specific direction of the Tribunal, on the application filed by the workman to call for concerned Clerk alongwith muster rolls from August 1979 to August 1998, pertaining to the service record of the workman- Jaipal son of Hazari, no compliance was made by respondent No. 2 (Management).

7. It is also surprising that in the impugned award also there is nothing discussed about the said part of the judicial record. Learned Tribunal itself has not mentioned or discussed anything, about the direction issued by it on the application moved by the workman to produce the record of the concerned period qua the service of the workman.

8. Learned counsel for the workman also refers to the order dated 10.12.2018, passed by a Co-ordinate Bench of this Court, which says as under:-

*“Present: Mr. Nitin Rathee, Advocate,
for the petitioner.*

Mr. Harish Nain, AAG, Haryana.

State would file a specific affidavit disclosing the

date of publication of impugned award dated 08.08.2013 as it is critical to know this date because of the stand of the State in its affidavit that original record of muster rools was weeded out on 16.11.2013.

Mr. Nain to also explain the effect of the admission that record was weeded out on 16.11.2013. Therefore, it follows that it was available throughout the trial before the Labour Court from the year 2002 till August 2013 when the award is made. By this admission, it also means that record upto the year 1985 was available but that was not produced by the Management nor any other record; then why should adverse inference be not drawn against them. The stand of the Department before the Labour Court in its written statement was that the workman had worked only for three months with the Department i.e. from the April 1985 to June 1985 and the dispute was raised after 16 years.

List on 01.12.2019.

10.12.2018

*Sd/-
(RAJIV NARAIN RAINA)
JUDGE”*

9. With reference to the said order, learned counsel for the workman also refers to the affidavit dated 01.04.2019, filed on behalf of respondent No. 2 (Management) - Divisional Forest Officer, (SF) Division, Rohtak. From the said affidavit, learned counsel referred to the fact that as per the stand taken by the management before this Court, record was weeded out on 16.11.2013. Thus, it can be safely concluded that the record for the concerned period was available throughout the trial before the Tribunal i.e. from the year 2002 till August 2013.

10. Impugned award before this Court is dated 08.08.2013 (Annexure P-7). On the application dated 16.08.2005 (Annexure P-5), moved by the workman, order dated 05.03.2010 was passed by the Tribunal, to produce the record before it, as sought to be produced by the workman in

his application. Therefore, in the absence of compliance of the said order and non-production of the required record, an adverse inference is required to be drawn against the management and in favour of the workman. There is nothing available on record that any kind of evidence or official order was ever passed by the concerned office itself or any other order/instruction, issued by the higher authorities, were there for weeding out the record.

However, with the purpose to examine the record of the present writ petition, this Court finds that for the first time in the writ petition, an affidavit dated 26.10.2017, of Sunder Lal, HFS, Divisional Forest Officer, (SF) Division, has been filed alongwith office order dated 16.11.2013 and the list of documents which were weeded out thereon by the Department.

For the sake of arguments, even if such letter is taken into consideration, it does not get escape from the sight that at the time of passing of the order dated 05.03.2010 by the Tribunal, complete record was available because through the reply and affidavit(s) filed by management, it has been admitted that the relevant record was weeded out after issuance of letter dated 16.11.2013.

Therefore, this Court is constrained to draw an inference of much higher scale that purposely department/management wanted to hide it from the Court and the same was not produced in the year 2010 itself before the Tribunal or in any case, prior to the decision of the reference by the Tribunal.

11. This Court has examined the submissions addressed and the material available on record.

12. 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 been produced by the management, at the time of evidence to be led by it. Strangely, the record pertaining to the crucial period was not produced 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.

13. In this regard, 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).”*

14. 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.”*

15. Thus, in view of the observations made hereabove, this Court has no hesitation to hold that dismissal of the claim statement of the petitioner/workman by the learned Tribunal and declining the reference on technical aspect by missing the line and intent of the Act, is not sustainable/tenable under law. Therefore, in the absence of non-production of the record, this Court is constrained to draw an adverse inference against the respondent-management and it is held that the petitioner/workman was working under the management from August 1979 to August 1998 and has been illegally terminated from service without compliance of the provisions of the Act, more in specific, provisions of Section 25-F of the Act.

16. Accordingly, impugned award dated 08.08.2013, passed by the Tribunal, is set aside. The petitioner/workman is held to be entitled for reinstatement, with continuity of service.

However, this Court is informed that as on day, the petitioner/workman has crossed the age of 60 years, therefore, he would not be entitled for actual benefit of reinstatement. It is pleaded case of the

workman that he continuously worked with the management from August 1979 to August 1998. He is fighting litigation for the last more than two decades. In these circumstances, and to meet out the ends of justice, this Court deems it appropriate to grant compensation of Rs.3,00,000/- to be paid to the petitioner/workman, by the management within a period of three months from today, failing which the lumpsum amount of Rs.3,00,000/- shall carry interest at the rate of 6% per annum, to be calculated from the date of filing of the present writ petition i.e. 10.12.2013, till its realization. Ordered accordingly.

17. Needless to say that the lumpsum payment of relief of Rs.3,00,000/- to the petitioner-workman is towards his all claims for backwages and the interest thereon. It is already noticed by this Court that the workman has attained the age of superannuation, thus, there is no question of seeking rejoining of service, however, the workman would be entitled for the other consequential benefits arising due to his entitlement for reinstatement with continuity of service.

Accordingly, with the aforementioned reasons recorded and observations made, present writ petition is **allowed** and impugned award is set aside. Disposed of.

(SANJAY VASHISTH)
JUDGE

January 25, 2024
Pkapoor

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