

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-740-2014 (O/M)

Date of decision : 04.01.2024

Neeraj Kamboj

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sushil Kamboj, Advocate
for the petitioner.

Mr. Praveen Chander Goyal,
Additional Advocate General, Haryana.

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HARSH BUNGER, J.

1. Petitioner (Neeraj Kamboj) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 30.01.2013 (Annexure P-4), passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute regarding termination of services of petitioner was dismissed.

Further prayer has been made for directing respondents to reinstate the petitioner with all consequential benefits.

2. Briefly, petitioner raised an industrial dispute regarding termination of his services by serving a demand notice upon respondents- Executive Engineer/Sub Divisional Engineer, Public Health, Sub Division No. 2, Yamuna Nagar (hereinafter referred to as 'respondent-Department'). In

the claim statement, the petitioner pleaded that he was appointed as a Tubewell Operator by respondent-Department with effect from 01.05.2008 at Jalghar of village Naya Gaon, Tehsil Jagadhri, District Yamuna Nagar and claimed to have remained in continuous service till 01.09.2010. The petitioner stated that he was discharging his duties as a Tubewell Operator and his work and conduct was satisfactory, however, from the beginning, he was being victimized and not even paid the minimum wages. The petitioner claimed that his services were illegally terminated on 01.09.2010 without any reason and without conducting any enquiry and even his wages for the period from 01.04.2010 to 31.08.2010 were wrongly withheld by respondent-Department. Accordingly, it was claimed that services of petitioner have been terminated in violation of provisions of Sections 25-F, 25-H and 25-N of 1947 Act, therefore, prayer for reinstatement in service with all consequential benefits has been made.

3. The aforesaid claim of petitioner was contested by respondent-Department on the plea that petitioner was not working under them and neither was he being paid salary by their office. It was stated that the maintenance of Jalgarh of village Naya Gaon was being done by Sarpanch of the village and the petitioner was appointed by Sarpanch and not by respondent-Department. Accordingly, prayer for dismissal of claim statement was made.

4. On the basis of the pleadings, the following issues were framed:-

- “i. Whether the workman was appointed by the management as Tubewll Operator on 1.5.2008 at the monthly wages of Rs. 1000/- ? OPW*
- ii. Whether the services of the workman were*

terminated illegally and if so whether he is entitled to be reinstated with continuity in service and full back wages ? OPW

iii. Whether the claimant was never employed by the respondents ? OPM

iv. Relief.”

5. In support of his claim, the workman stepped into witness box as WW-1 and tendered his affidavit Ex.WW-1/A.

6. On the other hand, the Department examined one Sumit Garg, SDE as MW-1 who tendered his affidavit Ex.MW-1/A.

7. After considering the material/evidence available on record, the Tribunal below, vide impugned award dated 30.01.2013 (Annexure P-4), rejected the claim of the petitioner and dismissed the reference by holding as under :-

“9. Keeping in view the arguments extended by both the parties, in my considered opinion as far as the workman having been appointed by the respondents as Tubewell operator is concerned, the onus to prove the same was on the workman as his appointment by the respondents has been denied by them. The workman has not brought forward any appointment letter to have proved so and in fact the respondents have brought forward memo dated 17.3.2011 Ex.R-1 wherein sanction was accorded for revision of minimum wages given to the part-time Pump attendants engaged through the panchayat revealing that workman whose minimum wages was Rs. 1000/- per month having been increased to Rs. 2000/- per month and further having been engaged through the panchayat, as asserted by the respondents regarding the workman having been engaged by the Sarpanch and not by the respondents.

10. Keeping in view my observations above, since the workman has failed to bring forward any cogent evidence to prove he having been employed by the respondents, as such in the absence of which he is not entitled to the relief as prayed for.

Issues no. 1 and 2 are accordingly being decided against the workman and issue no. 3 in

favour of the respondents.

Relief:

11. Keeping in view my findings on issues No. 1, 2 and 3 above, the reference stands dismissed.

The reference stands answered accordingly.”

8. Being dis-satisfied with the aforesaid award, petitioner has filed the instant writ petition before this Court.

10. Learned counsel for petitioner submits that the Tribunal below has erred in law and fact in passing the impugned award without considering the material/evidence placed on record. Learned counsel submits that the evidence of presence of petitioner on duty i.e. attendance register/log book was not taken into account by the Tribunal below. It is submitted that as per affidavit submitted by Shri Sumit Kumar, SDE on behalf of respondents No. 4 and 5 herein, it was proved that the petitioner had discharged his duty on part time basis as a Tubewell Operator and the wages of Rs. 1,000/- per month were being paid to him, which were increased to Rs. 2,000/- per month.

Learned counsel has further referred to Annexure P-19 (Colly.), which are copies of log book of the tubewell where the petitioner is stated to have worked and Annexure P-22, which is stated to be copy of information under RTI Act, supplied by Sub Divisional Engineer, Public Health Engineering, Sub Division No. 2, Yamuna Nagar, to state that his name was mentioned against village Naya Gaon at Serial No. 18 thereof. Learned counsel has further referred to Annexure P-23, which is copy of award dated 11.09.2013, passed in the case of Rashid Versus The Executive Engineer, Public Health Division No. 2, Yamuna Nagar and another,

whereby the claim of workman therein (Rashid) was accepted and workman was ordered to be reinstated with continuity of service and 50% back wages. Another reference has been made to Annexure P-24, which is also copy of award dated 11.09.2013, passed in the case of Aman Kumar Versus The Executive Engineer, Public Health Division No. 2, Yamuna Nagar and another, whereby also the claim of the workman therein (Aman Kumar) was accepted and he was ordered to be reinstated with continuity of service and 50% back wages. Accordingly, prayer has been made for quashing the impugned award and further directing respondents to reinstate the petitioner with all consequential benefits.

11. Per contra, learned State counsel has opposed the prayer made on behalf of petitioner by submitting that the impugned award is well reasoned and justified in the peculiar facts and circumstances of the case. It is submitted that the petitioner was never engaged by respondent-Department and rather the petitioner was appointed by Sarpanch of Gram Panchayat, Naya Gaon, therefore, there was no relationship of employee and employer between petitioner and respondent-Department. It is submitted that the petitioner had failed to produce any appointment letter on record and in the absence of any evidence to prove that he was employed by respondent-Department, accordingly, the petitioner was not entitled to any relief. Therefore, prayer for dismissal of writ petition has been made.

12. I have heard learned counsel for respective parties and have perused the paperbook with their able assistance.

13. A perusal of the paperbook would indicate that Annexure P-19

(Colly.), which are copies of log book of the tubewell where the petitioner is stated to have worked, had been produced on record of the Tribunal below, however, a perusal of the impugned award would reveal that there is no reference to the said document. A perusal of Annexure P-22 further suggests that the name of the petitioner finds mentioned therein against Serial No. 18 and the said document is stated to have been supplied by Sub Divisional Engineer, Public Health Engineering, Sub Division No. 2, Yamuna Nagar under RTI Act. Apart from the above, the petitioner has placed reliance upon two separate awards dated 11.09.2013 (Annexure P-23 and Annexure P-24), whereby the references of industrial dispute raised by workmen therein, namely, Rashid and Aman Kumar respectively, had been allowed and the workmen therein had been ordered to be reinstated with continuity of service and 50% back wages. It is required to be noticed here that the aforesaid awards dated 11.09.2013 (Annexure P-23 and Annexure P-24) have been set aside by this Court, vide separate orders dated 04.01.2024, passed in CWP-2706-2014 and CWP-2727-2014 respectively and the matters have been remanded to the Tribunal below for afresh decision.

14. Considering the totality of circumstances, especially the fact that Annexure P-19 (log book of tubewell) has not been considered much less referred to by the Tribunal below while deciding the reference in question, coupled with the fact that the name of petitioner finds mentioned in Annexure P-22, supplied by Sub Divisional Engineer, Public Health Engineering, Sub Division No. 2, Yamuna Nagar, which is stated to be a document received under RTI Act and the same may have some bearing on

this case and also considering that Annexure P-23 and Annexure P-24 (Awards), upon which reliance was placed, the same have been set aside by this Court, vide separate orders passed in CWP-2706-2014 and CWP-2727-2014 and the matters have been remanded to Tribunal below for afresh decision, accordingly, it would be in the interest of justice, if the instant matter is also remanded to Tribunal below for deciding the same afresh in accordance with law. Consequently, the instant writ petition is partly allowed and the impugned award dated 30.01.2013 (Annexure P-4) is set aside and the matter is remanded to Tribunal below for deciding the same afresh in accordance with law by passing a speaking order, preferably within a period of one year from today.

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

(HARSH BUNGER)
JUDGE

04.01.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No