

CWP-13012-2010 (O&M)

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

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**CWP-13012-2010 (O&M)
Decided on: January 04, 2024**

**The Executive Engineer, PWD (B&R), Division No. 1, Bhiwani.
...Petitioner**

Versus

**Dalip Kumar and others
...Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

**Present: Mr. Praveen Chander Goyal,
Additional Advocate General, Haryana,
for the petitioner.**

**Mr. Tara Chand Dhanwal, Advocate,
for respondent No. 1.**

SANJAY VASHISTH, J.

CM-11225-CWP-2015:

- i.) This is an application filed by respondent No. 1, under Section 17-B of the Industrial Disputes Act, 1947, read with Section 151 CPC, for grant of relief to the applicant.
- ii.) At the outset, without pressing upon the present application, a joint request has been made by both the sides to address arguments in the main writ petition, which is pending adjudication after its admission vide order dated 26.07.2010.
- iii.) Allowed as prayed for. Accordingly, present application stands dismissed as not pressed at this stage.

**Main writ petition is taken up on Board, for its final hearing
today itself.**

CWP-13012-2010:

1. Being management, Executive Engineer, PWD (B&R), Division No. 1, Bhiwani, has filed present civil writ petition, challenging the award dated 01.10.2008, passed by the Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as, 'the Tribunal'), in Reference No. 110 of 1998, vide which respondent No. 1 – Dalip Kumar (workman) has been directed to be reinstated on his previous post with continuity of service and 40% back wages from the date of demand notice i.e. 14.08.1997.

2. Factual matrix narrated in the claim statement is that the workman was engaged as Motor-Mate, Work-Munshi and Work Inspector in the month of December, 1989. Apart the work and conduct being satisfactory, there was no complaint against him. He suddenly fell ill on 31.01.1993 and was hospitalized. He remained under regular treatment upto May, 1995. In the month of June, 1995 he was not allowed to join the service. Again, the workman was operated four times. After recovery, when workman went to join his duty, he was not allowed to do so. It was verbally conveyed by the management that services of the workman were terminated w.e.f. 31.01.1993. Thus, the dispute reached the learned Tribunal for adjudication.

3. Neither any reason was assigned before termination of the services of the workman, nor provisions of Section 25-F of the Industrial Disputes Act, 1947 (for brevity, 'the Act'), were complied with. The workman pleaded that he has continuously worked from December, 1989 to 31.01.1993, therefore, his termination is against the provisions of law. Thus,

the workman sought reinstatement on the previous post alongwith continuity of service and back wages.

4. In the written statement filed by the management, a preliminary objection was taken that the claim is time barred. A stand is taken that the workman left the work of the management in the month of September 1992, on his own. The story put forth by the workman regarding his alleged treatment upto May, 1997 is an after thought. It is also pleaded that workman was appointed on daily wage basis and he worked from January, 1990 to December, 1992 with breaks. As per the stand taken in the written statement, workman had worked for 94 days from January, 1990 to December, 1990 and 245 days from January, 1991 to December, 1991. He never came forward to join the work as daily wager and no provision of law has been violated.

5. On the basis of the pleadings, learned Tribunal framed the following issues:-

“(1) Whether the termination of Service of Dalip is justified and in Order? If not, to what relief he is entitled?”

(2) Whether the management is not an industry?

(3) Relief?”

6. Findings recorded by the Tribunal, under Issue No. 1, reads as under:-

“8. Now, the crucial question that is to be seen in this case is whether the workman has completed 240 days of continuous service so as to entitle him the benefit of section 25-F of the Industrial Disputes Act. The workman himself appeared in the witness box as WW-I who fully corroborated his version taken in the claim statement. He has stated that he has worked continuously from December, 1989 to 31.01.1993 and then he

fell ill. He has stated that he was suffered from the disease of T.B. and got treatment till 05/1995 under the supervision of several doctors at Civil Hospital, Bhiwani and Kant Hospital. He has produced the treatment cards Ex. W-1 to Ex. W-10. He has specifically stated that he had applied for leave, intimated to the department and on 06/1995 he also contacted to Sh. A.K. Mehta, SDO regarding joining his duty. He was operated four time and in 06/1997 after recovery he again requested to join the duty but to no effect. His services were verbally terminated without any notice and no notice pay and retrenchment compensation was paid to him. The workman also examined Sh. Surender, Work Supervisor O/o PWD B&R, Bhiwani who was directed to bring the summoned record i.e. muster rolls, pay bills etc. He has categorically stated that attendance record from 01.12.1989 to 31.01.1993 is not available in the office. He has also stated that neither leave application nor the receipt register is available in the office. He has stated that he can not bring the summoned record even in future.

9. *The management on the other hand examined MW-1 Sh. Chander Mohan, SDO, PWD B&R, Bhiwani who has proved the working details Ex. M-1 to Ex. M-3 and the muster rolls from Ex. M-4 to Ex. M-34. A perusal of Ex. M-1 to Ex. M-3 goes to show that the workman has completed only 202 days in the preceding year of his termination in 1991. In his cross examination MW-1 Chander Mohan, SDO has admitted that he can not say as to whether the workman had fallen ill on 31.01.1993 and he had applied for leave on medical grounds. He also displayed his ignorance regarding his medical treatment as alleged by the workman. There is not even an iota of evidence on record to show that the workman himself left the job MW-1 Chander Mohan had admitted that no notice, notice pay and retrenchment compensation was paid to the workman. He has also admitted that attendance register was being maintained by the management.*

10. *Thus under the facts and circumstances, this court is left with no option except to draw adverse inference for not producing the entire summoned record and it will be deemed that the management has violated the provisions of Section 25-F of the Industrial Disputes Act. Reliance in this context was rightly placed upon State of Haryana Versus Presiding Officer and another 2007(1) RSJ 447 (D.B.) and State of Haryana Versus Suresh Kumar and another 2001(2) RSJ 286 (P&H HC) (D.B.). In these authorities, it is held that when summoned record has not been produced by the management then adverse inference is to be drawn against the management.*

11. *Now, coming to the back wages. The management has not led any evidence to show that the workman was gainfully employed so as to deprive him the benefit of back wages. Thus keeping in view the facts and circumstances of the case i.e. duration of service rendered by him and the nature of his job which is easily available. I think it will be just and fair to give him 40% back wages from the date of demand notice i.e. 14.08.1997. Hence, I decide this issue in favour of the workman and against the management.”*

7. In view of the findings recorded by the Tribunal, this Court is also fully convinced that the reasoning recorded is well founded and summoned record, i.e. muster rolls and pay bills etc., undoubtedly and in all probability, was in possession of the management and non-production of the same despite direction, would give firm reason to the Tribunal to draw its adverse inference for non-production of such record.

8. After examining the material available on record, I do not find any legal infirmity in the well reasoned award passed by the learned Tribunal, warranting interference in exercise of powers conferred by Article 226 of the Constitution of India.

9. In view of above, present writ petition fails being devoid of any merit. Accordingly, the same is hereby dismissed. However, there shall be no order as to costs.

10. Pending civil miscellaneous application(s), if any, are also disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

January 04, 2024
Pkapoor

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