



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-8184-2011

Date of decision : August 19, 2025

Nathi Ram

....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Shvetanshu Goel, Advocate, with
Ms. Kritika, Advocate, for the petitioner

Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Viranjeet Singh Mahal, Advocate and
Mr. Vishesh Bhatia, Advocate, for the respondent-
Management

KULDEEP TIWARI,J. (ORAL)

1. Through the instant petition, challenge is thrown to the award dated 16.4.2009, (Annexure P-2), as passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, wherethrough, the reference was answered against the workman. The primary reason for answering the award against the workman, is that he had worked only for 178 days, in the preceding year, from the alleged date of termination.

2. The facts qua which there is no wrangle amongst the parties, and are essential for the adjudication of the instant case, are that, in the instant case, the petitioner was appointed in May, 1993, as daily paid worker, and he had been working as such in continuation till 31.8.2000, and his work and conduct had remained good throughout. However, on



dated 31.8.2000, the respondent-Management terminated his services, despite the fact that he had completed continuous service of more than 240 days, and no notice or pay in lieu of notice, and retrenchment compensation were given to him at the time of termination of his services.

3. Further, the workers, junior to the petitioner had been retained in service, and also new workers were recruited after terminating the services of the petitioner, therefore, the termination is bad on account of violations of provisions of Sections 25-F, 25-G and 25-F of the Industrial Disputes Act. On the basis of the claim, the reference was made to the Tribunal, so as to ascertain, whether, the termination of the services of the petitioner-workman is legal and justified. The Management caused appearance, and brought on record the various documents to establish that in the preceding year from 31.8.2000, the petitioner has worked only for 178 days. It is the positive stand of the respondent-Management that the petitioner has never been engaged as a seasonal employee, rather he was engaged as a daily paid worker on temporary basis, therefore, he is required to complete 240 days in order to seek protection under Section 25-F of the Industrial Disputes Act.

4. An endeavour was made to challenge the impugned award on the ground, that in order to count 240 days, the learned Tribunal was required to count Sundays, and paid holidays. In order to lend vigour to his arguments on this aspect, the learned counsel for the petitioner has placed reliance on a judgment rendered by the Hon'ble Supreme Court in



Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation, 1986 AIR (Supreme Court) 458. The relevant paras are extracted hereinafter:-

“5. Section 25F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25B of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25-B(2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is 'actually worked under the employer. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc. The learned counsel for the Management would urge that only those days which



are mentioned in the Explanation to Section 25-B(2) should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression 'actually worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages - and we see no impediment to so construe the expression - there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated.

6. The leading authority on which reliance was placed by the learned counsel for the Management was Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd., AIR 1981 Supreme Court 852. We may straightway say that the present question whether Sundays and paid holidays should be taken into account for the purpose of reckoning the number of days on which an employee actually worked, never arose there. The claim was under the Payment of Gratuity Act. All permanent employees of the employer claimed that they were entitled to payment of gratuity for the entire period of their service, that is, in respect of every year during



which they were in permanent employment irrespective of the fact whether they had, actually worked for 240 days in a year or not. The question there was not how the 240 days were to be reckoned; the question was not whether Sundays and paid holidays were to be included in reckoning the number, of days on which the workmen actually worked; but the question was whether a workman could be said to have been actually employed for 240 days by the mere fact that he was in service for the whole year whether or not he actually worked for 240 days. On the language employed in Section 2(c) of the Payment of Gratuity Act, the Court came to the conclusion that, the expression 'actually employed' occurring in Explanation I meant, the same thing as the expression 'actually worked' occurring in Explanation II and that as the workmen concerned had not actually worked for 240 days or more in the year they were not entitled to payment of gratuity for that year. The further question, as to what was meant by the expression 'actually worked' was not considered as apparently it did not arise for consideration. Therefore, the question whether Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked was not considered in that case. The other cases cited before us do not appear to have any bearing on the question at issue before us.”

5. Learned counsel for the petitioner has also relied upon ***The Karnal Co-operative Sugar Mills Ltd., Karnal vs Ram Nath and another, CWP-6412-2001, decided on 22.4.2003*** and ***Batala Cooperative Sugar***



Mills Ltd. vs Sowaran Singh, 2006 AIR (Supreme Court) 56.

6. The learned counsel for the petitioner further draws the attention of this Court towards cross-examination of MW1, to submit that the respondent Mill a is seasonal industry, and they had also been maintaining the seniority list, and there were also paid holidays including Sundays, during the service tenure of the petitioner. This submission is made only to substantiate before this Court, that if at all, it be taken collectively, the petitioner, in fact, had worked for 240 days, therefore, in absence of compliance of mandatory provisions, the termination of services of the petitioner, is bad.

7. Learned senior counsel for the Management draws attention of this Court towards the observation of the learned Tribunal concerned, to submit that in fact, the petitioner is only able to prove, on the basis of record produced by the Management, that he has worked only for 178 days. He further submits that there is no wrangle with regard to the issue, as settled by the Hon'ble Supreme Court in ***Workmen of American Express International Banking Corporation's*** case (supra), to count Sundays, and other paid holidays, for counting of 240 days. However, in that eventuality as well, the petitioner is unable to reach the mark of 240 days. He also submits that in absence of anything on record, there is no illegality or perversity in the impugned award, requiring interference by this Court.

8. This Court has considered the submissions made by the learned counsel for the parties, and has perused the entire records, as well



as impugned award, and is of the considered view that there is no illegality or perversity in the impugned award requiring interference by this Court.

This Court reached the aforesaid conclusion on the following grounds:-

(i) that the petitioner has not produced any document before the learned Tribunal concerned, so as to establish that he had worked either as a seasonal worker, or he had worked for more than 240 days in the preceding year, whereas, the work charge Annexure R2/2, which is produced before this Court by the Management, clearly reflects that the petitioner worked from 1.9.1999 till 31.8.2000, only for 178 days. If the benefit of Sundays and other paid holidays, is to be given, in view of the *ratio* laid down in the aforesaid case, even then, unfortunately, the petitioner will not reach the mark of 240 days. Even today, learned counsel for the petitioner is unable to point out, from anything on record, to substantiate that the petitioner had worked for 240 days in the preceding year.

9. Therefore, in absence of any perversity with regard to facts in question, this Court do not find any reason to interfere with the well reasoned impugned award passed by the learned Tribunal.

10. At this stage, learned counsel for the petitioner submits that since the respondent-Mill is a seasonal industry, in case the petitioner made himself available for job, on the opening of respondent-Mill, his case may be considered by the Management for re-employment on account of



seniority, as maintained by the respondent-Management.

11. This prayer is not opposed by the learned senior counsel for the Management, and submits that in case the petitioner made himself available for re-employment on the opening of the respondent-Mill, and in case the work of the petitioner is required, he will be engaged, according to seniority, and this relaxation would be subject to the age of the petitioner. In case, the petitioner had already attained the age of superannuation, he will not be entitled for this relief.

12. **Disposed of** accordingly.

13. All pending application(s) also stand disposed of.

August 19, 2025

'tiwana'

(KULDEEP TIWARI)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>