
(2014) 11 P&H CK 0193
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 20989 of 2012

Balbir Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Industrial Disputes Act, 1947 - Section 25-F, 25-G

Citation : (2015) 2 SCT 377

Hon'ble Judges : Tejinder Singh Dhindsa, J.

Bench : Single Bench

Advocate : J.S. Cooner, Advocate, for the Appellant; Sunil Nehra, Senior Deputy Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.?Challenge in the instant writ petition is to the award dated 19.11.2009 passed by the Presiding Officer, Labour Court, Ambala whereby the reference as regards termination of services of the workman/present petitioner has been answered in favour of the Management and against the workman. Learned counsel for the petitioner would contend that the petitioner-workman had joined service as a Mali on daily wage basis on 1.6.1995 and worked continuously till 25.12.2005 whereupon his services were verbally terminated and he had not been allowed to join duties w.e.f. 26.12.2005. Learned counsel would argue that the petitioner while deposing as WW1 had categorically stated with regard to his date of joining and having worked continuously till the date of termination and as such, the Labour Court has erred in holding that he had not completed 240 days of service in the preceding 12 months from the date of termination. Learned counsel has further argued that the Management/respondent Forest Department had produced the record pertaining to the dates of service rendered by the workman on selective basis and the entire record had not been produced and on this count, an adverse inference should have been drawn against the employer. Learned counsel has

assailed the impugned award by raising yet another contention that in the demand notice dated 6.1.2006 the petitioner-workman had specifically stated that persons junior to him were retained, whereas his services had been terminated and such course of action was in clear violation of Section 25-G of Industrial Disputes Act, 1947 (for short "the Act").

2. Per contra, learned State counsel would submit that the onus was upon the workman to prove that he had worked for 240 days in the 12 months preceding his date of termination i.e. 25.12.2005 and which was not discharged. It is submitted that the workman never worked for 240 days in the Forest Department during any calendar year including 12 months preceding 12/2005 and as such, the question of violation of Section 25-F of the Act does not arise. Learned State counsel would argue that the impugned award is well-reasoned and has been passed on due appreciation of evidence and does not call for any interference.

3. Learned counsel for the parties have been heard at length and the case paper book has been perused.

4. In the impugned award, the Labour Court has observed that apart from the oral statement made by the workman as WW1, no evidence whatsoever was led to establish and substantiate with regard to his having worked for 240 days or more in the 12 preceding months prior to his alleged termination w.e.f. 26.12.2005. Such observation has not been rebutted by the learned counsel appearing for the workman even during the course of argument today. That apart, Labour Court has noticed the testimony of WW2 i.e. the witness examined by the workman who had brought the summoned record and had deposed that as per office record the workman had not worked even for a single day in the year 1997, worked for 19 days in the year 1998, did not work during the period 1999, 2000 and 2001 and worked for 26 days in the year 2002, 52 days in 2003, 77 days in 2004 and 72 days in 2005. Even the statement of Rajesh Rana, Range Officer, MW1 was to the effect that the workman had worked intermittently between 1998 to 2005 i.e. for 19 days in 1998, 26 days in 2002, 52 days in 2003, 77 days in 2004 and 72 days in 2005. It has further been noticed that the workman while appearing as WW1 did not utter even a single word so as to shatter the credibility of the evidence led by WW2 as also MW1. The record that was produced before the Labour Court to corroborate the testimony of WW1 and MW1 was in the shape of documents, Exhibits WW2/1 and WW2/2.

5. It is upon appreciation of such evidence, oral as well as documentary, that the Labour Court in the impugned award has recorded a finding of fact as regards the workman having not worked for a period of 240 days in the 12 preceding months from the date of alleged termination i.e. 25.12.2005.

6. The contention raised by learned counsel appearing for the workman that the Management/respondent - Forest Department had produced the relevant record only on selective basis and having not produced the entire record is without

merit. It was the claim of the workman himself that his services were terminated verbally w.e.f. 25.12.2005 and he had not been allowed to perform duties w.e.f. 26.12.2005. As such, the relevant period to reckon 240 working days would be in the 12 months preceding 25.12.2005. As per testimony of WW2 and Rajesh Rana MW1 and corroborated from the record in the shape of Exhibits WW2/1 and WW2/2, the workman had worked for a period of 77 days in the year 2004 and 72 days in the year 2005. It is not the case put forth on behalf of the workman that record for the years 2004 and 2005 had not been produced.

7. The scope and limit of jurisdiction of the High Court in issuing the writ of certiorari under Article 226 of the Constitution of India, while dealing with orders passed by inferior Courts or Tribunal, is by now well crystalized. Such jurisdiction is a supervisory jurisdiction and Court would not act as an Appellate Court. This would necessarily mean that findings of fact recorded by the Labour Court as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. Furthermore, findings of fact recorded by the Tribunal or the Labour Court cannot even be questioned in proceedings praying for the issuance of a writ of certiorari on the ground that the evidence adduced was insufficient or inadequate to sustain the impugned finding. Adequacy or sufficiency of evidence led on a point and inference of fact drawn by the Tribunal/Labour Court would be within the exclusive domain of the Tribunal/Labour Court and such issue cannot be agitated before a writ Court. Reference in this regard may be made to a constitutional Bench decision of Hon''ble Supreme Court of India in Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

8. Even as regards violation of Section 25-G of the Act, the Labour Court has observed that apart from the oral statement of the petitioner as WW1 to the effect that number of juniors were still working and have been retained in service, no evidence has been led to substantiate such assertion.

9. In the light of the discussion above and by applying the dictum laid down by the Hon''ble Supreme Court in Syed Yakoob's case (supra), this Court does not find any infirmity in the impugned award dated 19.11.2009 at Annexure P1. Writ petition is, accordingly, dismissed.