

(2015) 04 P&H CK 0289
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 655 of 2014

Daleep Kumar

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Citation : (2015) 146 FLR 704 : (2015) LLR 639

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Surinder Garg, for the Appellant

Final Decision : Allowed

Judgement

Amit Rawal, J.—There is no representation on behalf of the respondents. The challenge in the present writ petition is to the award dated 10.10.2013 (Annexure P-12) passed by the Presiding Officer, Industrial Tribunal, Bathinda, whereby the reference qua alleged termination of the petitioner has been answered against the petitioner-workman.

2. It is a matter of record that the petitioner was appointed on 4.9.2000 as Cycle Chowkidar and his services were allegedly terminated on 15.9.2004 and as a result thereof, the petitioner raised a demand notice, which was referred to the Labour Court as the conciliation proceedings failed and the Labour Court, on the basis of the evidence, declined the reference.

3. Mr. Surinder Garg, learned counsel appearing on behalf of the petitioner submits that the award of the Labour Court is vitiated in law, perverse, much less, erroneous. Since the claim of the petitioner has been established on record through umpteen number of documents, as referred to in paragraph 15 of the award, but the Labour Court has yet not taken cognizance of the documents by observing as under:--

"But mere admission of the witness examined by the respondent as referred by

the authorized representative of the claimant does not amount that workman has regularly worked from 5.9.2000 to 14.9.2004. Moreover, MW-2 Darshan Singh has simply admitted that applicant worked from 05.09.2000 to 14.09.2004 and on the basis of this simple admission, it cannot be said that workman continuously worked with the respondent from 05.09.2000 to 14.09.2004."

4. The aforementioned observation of the Labour Court, in my view, is not only erroneous but perverse as the workman discharged the onus qua his employment, payment of salary, appointment letter etc. The aforementioned evidence was enough to show that the petitioner had worked for more than 240 days. Despite that, the Labour Court addressed at a point, which was not the point of determination, by taking into consideration Ex. W-14, a letter dated 3.9.2004 issued by the Employment Exchange, on the basis of which the petitioner was appointed as Cycle Chowkidar and by considering the appointment on 4.9.2004, the Labour Court has found that the petitioner had not worked for more than 240 days in a relevant year upto 15.9.2004 and, therefore, rejected the reference.

5. I am afraid, the aforementioned finding of the Labour Court is not based on the umpteen number of evidence brought on record and in view of the ratio decidendi culled out by the Hon"ble Supreme Court in Mohan Lal Vs. Management of Bharat Electronics Ltd., AIR 1981 SC 1253 : (1981) 42 FLR 389 : (1981) LabIC 806 : (1981) 2 LLJ 70 : (1982) 1 SCALE 552 : (1981) 1 SCALE 872 : (1981) 3 SCC 225 : (1981) 3 SCR 518 : (1981) 13 UJ 943 , where the Hon"ble Supreme Court had an occasion to interpret the provisions of Section 25-B(2) of the Act and while interpreting the provisions held that the aforementioned section describes a situation where the workman is not in employment for a period of 12 calendar months but has rendered the services for a period of 240 days commencing and counting back from the relevant date i.e., date of retrenchment and in such circumstances he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B.

6. Thus, in view of what has been observed above, the petitioner is due to be in service for a period of one year for the purpose of Section 25B of the Act. Therefore, in view of the observations of the Hon"ble Supreme Court, the finding of the Labour Court for taking the employment of the petitioner w.e.f. 4.9.2004 is totally erroneous, much less, fallacious. Accordingly, the award of the Labour Court is set-aside and the writ petition is allowed. The petitioner shall be entitled to reinstatement with continuity of service along with 50% back-wages as there is an averment in the claim statement that the petitioner remained unemployed despite his best efforts.