

(2001) 05 P&H CK 0144
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14170 of 1999

Director of Extension, CCS, HAU, Hissar	APPELLANT
Vs	
Rattan Singh	RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25

Citation : (2001) 05 P&H CK 0144

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Mr. Girish Agnihotri, for the Appellant; Mr. R.K. Malik, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—By this common judgment, two writ petitions being CWP No. 14170 of 1999 and 1622 of 2000 are being disposed of. Both these two writ petitions arise out of the same award and, therefore, they are heard together.

2. By the impugned award, the Labour Court, reinstated the workman with continuity of service, however, with only 50% back wages. The employer has challenged the award of re-instatement by filing Civil Writ Petition No. 14170 of 1999 and the workman has challenged the denial of 50% back wages by filing Civil Writ Petition No. 1622 of 2000.

3. The case of the workman is that he was employed as Security Guard on 1.4.1992 and that his services were terminated in January, 1993. The date of appointment is not in dispute, however, the case of the employer is that the workman left the job after January, 1993.

4. The second thing, which is in dispute, is regarding the working days of workman in the month of November, 1992. The employer contends that the workman has not worked in that month while contrary is the stand of workman.

It is, of course, admitted that if it is held that the workman worked in the month of November, 1992 he had completed 240 days of service.

5. The third question, which is to be determined in this case is whether the workman gets the advantage of Section 25-H of the Industrial Disputes Act, (hereinafter referred to as "the Act").

6. In the writ petition, filed by the workman, the question to be decided is whether the Labour Court has erred in denying 50% of back wages to the workman.

7. So far as the question of workman having abandoned the service is concerned, the employer in the written statement, copy of which has been produced at Annexure P/4, has mentioned as under :-

"3) It is wrong to say that applicant was illegally removed from service in Jan, 1993. Applicant remained absent wilfully for 8 days in the month of August, and for 9, days in the month of December. And in the month of January also the applicant after having remained absent for 4/5 days worked for four days and thereafter did not come present. Otherwise also in the months of Jan-Feb the work no more exists. Therefore, no question arises for any notice or hearing because Sh. Rattan Singh was working on daily wages and as per I.D. Act he even did not complete 240 days."

The employer is not clear as to whether the workman left the job or that he was not given work because no work existed. By taking two contrary defences together, the employer has made its case regarding abandonment of service doubtful.

8. Regarding the working days of the workman in the month of November, 1992, the muster rolls have been produced. The Muster roll for the month of November, 1992 is at WW-3/1 in the records of the Labour Court. In the said Muster roll, the name of the workman does not appear but alongwith the names of other workmen, the name of brother of the workman i.e. Jaibir s/o Sh. Hajari Lal appears. There is a thumb mark on the revenue stamp paper which has been mentioned as L.T.I, of Jaibir. The workman contends that he has worked for the month of November, 1992 and the thumb mark is affixed by him. To prove the same the workman has examined Hand Writing Expert and the Hand Writing Expert has stated that the thumb mark is of the workman.

9. Counsel for the employer vehemently argued that when the workman has signed on the other muster rolls for having received the payments, the impression thumb mark in the muster roll for the month of November, 1992 is a mischief of committed by the workman. However, it is not shown to have been stated by any of the witnesses produced that the workman has put this thumb mark for committing mischief. It is argued by the counsel for the workman that the employer is taking thumb marks on some muster rolls and writing name(s) of some other workmen so that the workman may not complete 240 days of

service. It will be interesting to note that it is not questioned to the workman in the cross-examination as to why he put his thumb mark and it is also not stated by the witness of the management as to how the thumb mark of the workman was made on the muster roll of November, 1992, when the name written below is of Jaibir.

10. Counsel for the employer has argued that the workman's deposition was taken earlier to that of the Hand Writing Expert and therefore, he could not be cross-examined. However, the workman could have been recalled for examination in such a situation. Moreover, as stated earlier, no specific explanation has been given by the witness of the management also, on this point. This being the position and the workman having proved by the evidence of Hand Writing Expert that the thumb mark below which Jaibir's name was written, is his thumb mark, I find that the Labour Court has not erred in coming to the conclusion that the workman has worked for the month of the November, 1992 and has completed 240 days.

Moreover, the Labour Court has also held that the statement that the juniors have been retained has gone unchallenged. It is not shown from the record that this observation of the Labour Court is not correct.

11. In view of the above reasons, the award of the Labour Court regarding reinstatement of the workman with continuity of service does not require any interference.

12. Regarding back wages, it is contended by the counsel for the workman that full back wages should have been awarded. However, the workman had worked for a period which was even short of one actual year and he had given the demand notice on 20.9.1994 though the termination date is January, 1993. Considering all these factors, the restriction of back wages to the tune of 50% from the date of demand notice cannot be said to be harsh in any manner.

13. As a result, both the writ petitions deserve to be dismissed and they are hereby dismissed.

14. Petitions dismissed.