
(2010) 04 P&H CK 0460
In the Punjab And Haryana At Chandigarh

Divisional Forest Officer (Territorial) Forest Department	APPELLANT
Vs	
Sh. Rama Nand and Another	RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25F

Citation : (2010) 04 P&H CK 0460

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Augustine George Masih, J.—The prayer in the present writ petition is for setting aside of the Award dated 18.10.2005 (Annexure-P-1), passed by the Industrial Tribunal-cum-Labour Court, Hisar, vide which the reference had been answered in favour of the respondent/Workman, holding him entitled to reinstatement with continuity of service and other consequential service benefits alongwith 50 per cent back wages from the date of issuance of demand notice, i.e., 15.04.1999 till the publication of Award and full wages thereafter till reinstatement.

2. Counsel for the petitioner contends that the Award had gone against the petitioner/Management on the ground that the summoned attendance records was not produced by it. He contends that the conclusions drawn and the findings given, are totally perverse as the Management Witness, i.e., MW-1 Om Prakash had filed attendance details Ex.M-1 and Ex.M-2. When the said details had been placed on record by the petitioner/Management itself, there was no question of drawing an adverse inference as the evidence was very much available on the record as had been called for and summoned by the respondent/Workman. In any case, he contends that the respondent/Workman had since not completed more than 240 days in service in the 12 preceding months, the findings recorded by the Labour Court, thus, cannot be sustained and the relief granted to the respondent/Workman, could not have been granted to him and the said Award, thus, deserves to be set aside.

3. During the course of hearing, this Court had on earlier occasion, to settle equities between the parties, directed the petitioner/Management to produce the muster rolls of the 12 preceding months from the alleged date of termination of the respondent/Workman. It was the claim of the respondent/Workman that he had worked with the petitioner/Management from 01.01.1990 to 31.01.1998 as Beldar. Accordingly, muster rolls from February, 1997, to January, 1998, were placed on record by the petitioner/Management. Those muster rolls are on record as Annexure-B-1 to B-13. The complete relevant Muster Rolls Issue Register, Dabwali Range for 1997-1998 has been placed on record as Annexure-C. On the basis of the muster rolls placed on record, counsel for the petitioner/Management contends that the respondent/Workman had worked with the petitioner/Management only for 111 days. In the months of March, July, August, and September, 1997, he worked for 28 days, 26 days, 28 days, and 29 days respectively. He on this basis contends that since the respondent/Workman had not worked for 240 days in service in the 12 preceding months from the date of his termination, there was no violation of Section 25-F of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") and, therefore, no relief could have been granted by the Labour Court as there was no violation of the provisions of the Industrial Disputes Act, 1947, and termination of services of the respondent/Workman was fully justified and in accordance with law. He on this basis states that the Award deserves to be set aside.

4. On the other hand, counsel for respondent/Workman submits that the respondent/Workman had summoned the attendance records. Despite various opportunities granted to the petitioner/Management, it failed to produce the same at the relevant time because in the evidence it had produced the attendance records, which does not fulfil the requirement of law as when the summoned records were not produced and, therefore, adverse inference had to be drawn by the Labour Court. The finding based on the adverse inference drawn by the Labour Court, is fully justified and does not call for any interference by this Court.

5. I have heard counsel for the parties and have gone through the records of the case.

6. It is true that the petitioner/Management failed to produce the summoned record of attendance, on the application moved by the respondent/Workman for its production despite opportunities having been granted to it. In any case, when the evidence was led by the petitioner/Management before the Labour Court, it had indeed produced the attendance records as is apparent from the statement of MW-1/Om Prakash, who had produced the attendance details Ex.M-1 and Ex.M-2. Therefore, the adverse inference drawn by the Labour Court, is not in accordance with law. The said inference can only be drawn in case the records, which have been summoned by the Labour Court, had not been produced by the party in possession thereof, despite such direction being issued. Here, although, at the initial stage when the records were summoned, the petitioner/

Management failed to produce the records but at the time, when the Award was to be passed, the said records were available with the Labour Court and, therefore, the Labour Court could not have proceeded to draw an adverse inference as the said records cannot be said to have not been produced before the Labour Court for its consideration. The finding based on the adverse inference drawn by the Labour Court, is not in accordance with law and, therefore, cannot be upheld. In any case, to settle equities and to do justice between the parties, the muster rolls for the 12 preceding months from the date of alleged termination of the respondent/Workman were summoned, which have been placed on record as Annexure-B, a perusal of which clearly shows that the respondent/Workman had only worked for 111 days with the petitioner/Management during the 12 preceding month from the date of his termination. That being so, as the respondent/Workman had not completed more than 240 days in service in the 12 preceding months from the date of his termination, the Award passed by the Labour Court cannot be sustained as there is no violation of the provisions of the Industrial Disputes Act, 1947.

7. Accordingly, the present writ petition is allowed. The impugned Award dated 18.10.2005 (Annexure-P-1), passed by the Industrial Tribunal-cum-Labour Court, Hisar, is hereby set aside.

8. Now, let us advert to the Civil Misc. application.

C.M. No. 5943 of 2010.

9. The respondent/Workman has moved an application that the petitioner/Management has not paid him the last drawn wages, as per the provisions of Section 17-B of the Industrial Disputes Act, 1947, for sixteen months. The said application is duly supported by an affidavit of respondent/Workman dated 28.04.2010. A perusal of the record shows that earlier the respondent/Workman was being granted the said benefit as per the Order passed by this Court and on earlier occasion, when an application was moved by the respondent/Workman, the last wages drawn had been paid to the respondent/Workman.

10. Accordingly, the present application is allowed. The petitioner/Management is directed to pay last drawn salary to the respondent/Workman, as per the provisions of Section 17-B of the Industrial Disputes Act, 1947, for the months he has not been paid, within a period of two months from the date of receipt of certified copy of this Order.