
(2001) 05 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10070 of 1997

Isham Singh

APPELLANT

Vs

Presiding Officer, Labour Court, Ambala

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (2001) 05 P&H CK 0126

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

Bench : Single Bench

Advocate : Mr. M.S. Guglani, for the Appellant; Mr. A.K. Goyat, Assistant Advocate General, Haryana, for the Respondent

Judgement

S.S. Sudhalkar, J.—This writ petition is filed by the workman challenging the award of the Labour Court dated 28.11.1996 (copy annexure 2/1) vide which his prayer for reinstatement and consequential relief was rejected. The Labour Court held that the petitioner has not completed 240 days of service. The contention of the petitioner regarding the juniors being retained is also not accepted by the Labour Court.

2. At the time of arguments, learned counsel for the petitioner relied only on his contentions regarding violation of provisions under Sections 25-G and 25-H of the Industrial Disputes Act (hereinafter referred to as "the Act"). According to learned counsel for the petitioner, juniors to the petitioner are retained in service when his services were terminated. He has drawn my attention to the claim statement, copy of which has been produced in this case at annexure P/2. In the claim statement he has stated that number of juniors are still working in the respondent-department and he has also mentioned the names of 10 juniors persons along with the posts on which they are working and the date of their joining service. The petitioner was Mali-cum-Chowkidar and, therefore, out of the list persons at serial Nos. 4, 6 and 10 required to be considered. The respondent, in their written statement before the Labour Court, copy of which has been

produced at annexure P/4, has stated that the petitioner was junior-most and that all the three persons namely Baldev, Sunil and Rakesh are senior to the petitioner. The clarification is given only qua three persons. Moreover, name of Sunil does not appear in the list of the persons mentioned in the claim statement. No clarification is given regarding the other workmen including the workmen mentioned at serial Nos. 4,6 and 10, who are Mali-cum-Chowkidars. In the evidence, also, the management's witness has also not thrown any light regarding the persons mentioned as juniors to the petitioner. The petitioner in his cross-examination has denied that Baldev, Sunil and Rakesh were senior to him. When there is a clear allegation in the claim statement. the respondent should have, if the allegation was not correct, specifically denied the same. The denials qua the three workmen only (out of which name of one does not appear in the claim statement) is not sufficient. Moreover, as mentioned above, the three persons who are working as Mali-cum-Chowkidars and are mentioned at serial Nos. 4,6 and 10 in the list are shown juniors to the petitioner and no clarification is given regarding them.

3. The Labour Court has held that the workman failed to prove that his juniors were retained in service. However, as allegation made by the petitioner is not denied, no further proof is required for the same. Hence it is clear that there is violation of the provision of Section 25-H of the Act.

4. The Labour Court has also laid stress on the fact that during conciliation proceedings, the petitioner was asked to join but he denied on the pretext that he was asked by the department to sign on the blank paper. The contention in the written statement of the respondent before the Labour Court is as under . "Para No. 4 is denied. The whole story is concocted. It is stated that the service of the official was no long not joined his duty inspite of being informed vide this office No. 15210 dated 30.10.1993, as there was no vacant post as and when the post exists he was again called but he did not join his duty." The contention of the respondent, is, therefore, vague and appears to be misleading also. If the petitioner was to be called back, there was no reason for the respondent to terminate his service. Therefore, even if such an offer was made, the petitioner could legally not accept the same. Moreover, as stated above, the written statement shows that no clear stand has been taken by the respondent on this point. In view of the above, this writ petition deserves to be allowed. So far as back wages are concerned, looking to the duration of the service actually rendered by the petitioner, I find it proper to award 50 percent back wages.

5. As a result, this petition is allowed. The award of the Labour Court is set aside and the petitioner is ordered to be reinstated in service with continuity thereof with 50 percent back wages from the date of demand notice.

6. Petition allowed.