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**(2015) 05 P&H CK 0443**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 15844 of 2013**

Punjabi University

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

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**Date of Decision :** 04-05-2015

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25(G), 25F, 25-F, 25G, 25-G

**Citation :** (2015) 3 LLJ 337

**Hon'ble Judges :** Rakesh Kumar Jain, J

**Bench :** Single Bench

**Advocate :** Vipul Jindal, for the Appellant; Vikas Singh, Advocates for the Respondent

**Final Decision :** Allowed

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## Judgement

Rakesh Kumar Jain, J—The petitioner has challenged the award of the Industrial Tribunal dated 11.2.2013, whereby respondent No. 2/workman has been ordered to be reinstated with continuity of service but without back wages. Learned counsel for the petitioner has argued that respondent No. 2/workman had worked for 233 days, therefore, the provisions of Section 25-F of the Industrial Disputes Act, 1947 [for short "the Act"] were not attracted. However, the Tribunal has added the rest days including Sundays and made it more than 240 days to apply Section 25F of the Act. It is submitted that the workman has himself admitted that he had been paid wages being a daily wager for the days he had actually worked. He has also admitted that he had been paid Rs. 68/- per day and if the said wages is multiplied with the days he had worked, it comes to 233 days. In support of his submission, he has relied upon a Division Bench judgment of this Court in the case of Ram Gopal Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1 and Another, (2013) 136 FLR 1003 : (2013) 1 LLJ 447 : (2013) 1 LLN 557 : (2013) LLR 132 .

2. In reply to this argument, learned counsel for respondent No. 2/workman has submitted that MW1 has stated that the daily-wagers are paid the wages

including that of the rest days.

3. I have perused the record and found that the statement of MW1 is inconsequential in view of the statement of the workman and the documentary evidence from which it is proved that he had not worked for 240 days as required under Section 25-F of the Act.

4. The question thus would be "whether Sunday can also be included to calculate 240 days in case of a daily-wager?"

5. In this regard, the judgment in the case of Ram Gopal v. Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad and Another (supra) is clearly on the subject in which the reliance has been placed on a Full Bench judgment of this Court rendered in titled as Executing Engineer, Public Health Division No. 1, Panipat v. Sanjay Rana and Another decided on 3.12.2010 in which it has been held that in a case of a daily wager, Sunday and other holidays are not to be counted because he is not paid any salary for that day. The first question raised by the petitioner is thus decided in his favour.

6. Learned counsel for the petitioner has further argued that in para 17 of the award, the Tribunal has held that there is violation of Section 25(G) and (H) of the Act because after the termination of service of the petitioner, the respondent No. 2 has employed other persons on the same post. In this regard, he has relied upon a judgment of this Court in the case of Executing Engineer P.W.D. (B/R) Branch, Jhajjar Division Jhajjar v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Another (2009) 2 SCL 605 : LNIND 2009 PNH 11174 to contend that in a case of daily wage employee, the non-compliance of Section 25-G and 25-H, would not entitle him for reinstatement.

7. In this regard, learned counsel for respondent No. 2/workman has referred to a decision of this Court in the case of General Manager, Punjab Roadways, Tarn Taran v. Sardar Masih and Another (2007) 2) SCT 763 : LNIND 2007 PNH 947 to contend that completion of 240 days is the requirement of Section 25-F and not of 25-G and 25-H.

8. I have heard both the counsel for the parties in this regard as well.

9. There is no dispute that if a workman has not worked for 240 days and his service is terminated in violation of Section 25-G and 25-H, he can still invoke the said provisions as the employer is bound to follow the spirit of last come first go. But the question is as to whether in the case of daily wager the said principle has to be followed? In this regard, in the case of Executing Engineer P.W.D. (B/R) Branch, Jhajjar Division Jhajjar v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Another (supra), this Court had relied upon a Division Bench judgment of this Court in the case of Ishwar Singh Vs. State of Haryana, (2010) 1 RCR(Criminal) 494 to observe that in a case of daily wage employee, the non-compliance of the provisions of Section 25G and 25H of the Act would not entitle him to reinstatement but for compensation.

10. In view of the aforesaid, I find merit in the arguments raised by learned counsel for the petitioner and the finding recorded by the Tribunal in para No. 17 of its award is hereby reversed. Since the workman/respondent No. 2 has not completed 240 days, therefore, he is not entitled to any compensation as well. Accordingly, the present petition is hereby allowed and the impugned award is set aside.