

(2017) 01 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : 337 of 2016

Rajeev

APPELLANT

Vs

Divisional Forest Officer, Rohru and others

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, Order 11Rule 12, Order 11Rule 14 - Industrial Disputes Act, 1947, Section 11(3), Section 25-D - Procedure and powers of conciliation officers. Boards, Courts and Tribunals and National Tribunals.

Citation : (2017) 01 SHI CK 0023

Hon'ble Judges : Chander Bhusan Barowalia

Bench : Single Bench

Advocate : Bhag Chand Sharma, Pushpinder Jaswal, Rajat Chauhan

Judgement

1. The present petition is maintained by the petitioner under Article 227 of the Constitution of India, assailing the order dated 22.04.2016, passed by the learned Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, (hereinafter to be called as ("the Tribunal")) in claim petition Reference No. 32 of 2015, wherein the application of the petitioner, under Section 11, sub-Section (3), clause (b) of the Industrial Disputes Act, 1947, read with Order 11, Rules 12 & 14 of the Code of Civil Procedure (hereinafter to be called as "the Code") was dismissed.

2. Briefly stating facts giving rise to the present petition are that the petitioner was engaged by the Forest Department in Bashla Range of Forest Division Rohru, on muster roll basis in the year January, 2009. The work assigned to him was of a nature i.e., growing of nursery, plantation, looking after of nursery plants, protection of forest from fire, seized timber watching, etc. The petitioner worked for 285 days during the year 2009, though the petitioner was engaged

irregularly, but he was not permitted to complete his 240 days in a calendar year, in order to defeat his claim for continuous service or regularization. On April, 2011, he was engaged casually on bill/payment basis, besides him there are some other persons also, who were engaged casually on payment/bill basis and no record of such persons work is being maintained by the respondents. So as to evade petitioner from completing 240 days in a calendar year, no proper record of his work is being maintained by the respondents. Thus, the petitioner maintained an application No. 37 of 2016, which was dismissed, vide order dated 22.04.2016. Hence the present petition.

3. By filing reply, respondents resisted and contested the claim of the petitioner, wherein preliminary objection qua maintainability was taken. On merits, it was averred in the reply that the petitioner willingly worked with the Department on bill/payment basis and he never represented nor objected the same. The present petition was filed by the petitioner only to create harassment, hence the same deserves to be dismissed.

4. I have heard the learned counsel for the parties and have gone through the record carefully.

5. Mr. B.C. Sharma, learned counsel for the petitioner has argued that the petition may be allowed and respondents be directed to produce the complete record before the learned Tribunal. On the other hand, Mr. Pushpinder Jaswal, learned Deputy Advocate General, appearing on behalf of the respondents has argued that there is no necessity to produce the record, as the same is neither material nor required for the adjudication of the case and prayed that the present petition may be dismissed.

6. To appreciate the arguments of the learned counsel for the parties, I have gone through the records in detail.

7. It is found that the learned Tribunal below has not allowed to produce the documents, as they were not relevant, however some of the documents are relevant to prove the fact that the petitioner was not allowed to work for 240 days in a calendar year and his termination was against the Rules.

8. After going through the documents which the petitioner has sought for, and reference which is to be answered by the learned Tribunal below, I had given a deep thought and finds that as the petitioner has to prove that he was employed by the respondents and was terminated despite the fact that there is a work, so some of the documents, as mentioned in the application, seems to be relevant and if allowed to be produced on record at the instance of the petitioner, the same will assist the Court to adjudicate the matter. The following documents are mentioned as under: (i) Order/letter with respect to deviation from maintaining the muster rolls to bills from April, 2011, which is against the provisions of Section 25-D of the Industrial Disputes Act.

(ii) Records showing details of the works which was done during the whole year

within the Forest Division Rohru and Forest Range Bashla, viz. growing of nursery, watering of nursery, gardening of the nursery and planting of nursery, fencing, timber watching, fire watching and other forest patrolling, construction of forest roads/paths etc.

(iii) Record relating to the consent given by the petitioner/claimant to work on bill basis instead of muster rolls as averred in the written statement/reply. Otherwise, under Section 25-D of the Act, it is the statutory duty of the employer to maintain muster rolls of the workers.

(iv) Letter No. 553, dated 29.04.2014, written by respondent No. 1 (Divisional Forest Officer, Rohru) to the Labour-cum-Conciliation Officer, Rampur.

9. Accordingly, this Court finds that these documents are relevant as per this Court, as they will help the Tribunal to adjudicate the lis properly. Further the respondents has no privilege over these documents, as they are public documents and production of these documents will always be helpful for appropriate adjudication of the case. So the present petition is required to be allowed, in order to come to the just conclusion, while adjudicating of the dispute of the petitioner before learned Tribunal.

10. In these circumstances, the present petition is allowed and the respondents are directed to produce the above mentioned documents before the learned Tribunal and in case, so requires, the copies of the said documents be supplied to the petitioner, as per Rules.

11. No order as to costs. The petition stands disposed of, so also pending application(s), if any.