
(2014) 03 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4658 of 2014 (O&M)

Rajwanti

APPELLANT

Vs

Divisional Forest Officer

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2014) 2 LLJ 402

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Ashok Kumar Sharma, Advocate for the Appellant

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.

C.M. No. 3830 of 2014

1. Application for placing on record Annexures P-6 to P-8 is allowed, subject to all just exceptions. The said Annexures are taken on record.

C.W.P. No. 4658 of 2014

Challenge in the present writ petition is to the award dated 07.06.2013 (Annexure P-5) whereby, the Labour Court, Hisar has dismissed the reference filed by the workwoman on the ground that apart from the oral and bald statement of the petitioner that she remained into employment from January, 1992 to 30.04.2010, there is nothing to show that she had worked with the department.

2. Counsel for the petitioner has vehemently argued that the department has failed to produce the cash book from the year 2008 to 2010 and, therefore, the adverse inference should be drawn against the said department.

3. After hearing counsel for the petitioner, this Court is of the opinion that no case is made out for interference in the well-reasoned order passed by the Labour Court. It is a matter of fact that the demand notice dated 12.10.2010 was filed by the petitioner-workwoman stating that she had worked as Beldar-cum-Mali under the supervision of various Forest Guards from January, 1992 to 30.04.2010. The names of the Guards under whom she had worked were also mentioned namely Azad, Jage and Surinder. She had alleged that she had done duty mostly at Penta was Beat and Charkhi Dadri Beat under Dadri range. The termination of her services were violative of the provisions of the Act. Resultantly, the matter was referred to the Labour Court whereby, the said averments were repeated in the claim statement.

4. In the written statement, a specific stand was taken by the department that she had never worked for a single day from January, 1992 to 30.04.2010 on the said post. It was also denied that she had worked with the Guards which are mentioned above. Thus, the relationship of employer-employee itself was denied.

5. The Labour Court examined the workwoman as WW-1 and Ashok Kumar, Range Officer as MW-1, who produced the available record of the department. After examining the statements and the record, the Labour Court came to the conclusion that the name of the workwoman did not figure in any of the record, which was produced and thus, decided the reference against the workwoman.

6. Counsel for the petitioner has not been able to address any meaningful argument since the onus to prove that she was an employee of the department was on her as per the settled principles of law. The workwoman is alleged to have worked for a period of 18 long years from 1992 to 2010 and not a single employee from the department has been examined in support of her claim to allege that she had worked in the said department for the 18 long years. The onus thus could not be shifted by the workwoman to the management which she was required to do. The record has been examined by the Labour Court and nothing could be shown that at any point of time, the workwoman's presence had been marked. The Apex Court in *R.M. Yellatti Vs. The Assistant Executive Engineer*, laid down the principles that the drawing of adverse inference would depend upon the facts of each case and normally, the record of the employment is with the management and this Court is not to interfere under Article 226 of the Constitution of India in the finding of the Labour Court unless they are perverse. The earlier judgment of the Apex Court in *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, was also considered. The following principles were laid down:

Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings u/s 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workwoman stepping in the witness box. This burden is discharged upon the workwoman adducing

cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workwoman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workwoman will not suffice in the matter of discharge of the burden placed by law on the workwoman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workwoman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.

Keeping in view the above said principles, this Court is of the opinion that there is no scope for interference in the well-reasoned order and in the factual finding, which has been recorded by the Labour Court and the present writ petition is accordingly dismissed.