

(2011) 01 P&H CK 0335
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4588 of 2010 (O and M)

Ram Karan

APPELLANT

Vs

The Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 01 P&H CK 0335

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—This writ petition under Article 226/227 of the Constitution of India has been filed challenging the award of the Labour Court, Ambala dated 30.1.2009 passed while determining reference No. 22 of 2005. The learned Counsel for the Petitioner contends that the Petitioner being a workman had completed 240 days and his services were terminated without complying with the provisions of Industrial Disputes Act and he further contends that the Respondents failed to participate in the proceedings before the Tribunal and their defence was struck off and in this view of the matter, the contention raised by the learned Counsel for the Petitioner ought to have been appreciated and accepted. The Tribunal even though accepted that 240 days were completed by the Petitioner yet it denied the benefit to the Petitioner by observing that he was a daily wager and thus was not entitled to get any benefit on account of his termination. While making a CWP No. 4588 of 2010(O&M) 2 submission in support of his contentions, learned Counsel for the Petitioner relied upon observations of Hon'ble Supreme Court cases titled as Ramesh Kumar v. State of Haryana 2010 (1)SCT 675 and Krishan Singh v. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) 2010(2) SCT 534 as also the judgments of this Court titled as State of Haryana v. Shri Bhoop Singh and Anr. 2010 (3) SCT 568 and Divisional Forest Officer (Territorial), Bhiwani v. The

Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. 2010 (3) SCT 557.

2. On the other hand, learned Counsel for the Respondents has contended that Petitioner has not been able to establish that he had worked for 240 days and he further referred to the written statement which has been filed in response to the instant petition that the Petitioner has not completed 240 days of service with the Respondents so as to justifiably raise the pleas which have been raised in the instant petition as also before the Tribunal.

3. I have heard learned Counsel for the parties and have perused the impugned award. The Respondents did not contest the proceedings and the claim as set up by the Petitioner. There was thus no material before the Labour Court on the basis of which it can be disputed that the Petitioner did not complete 240 days. The Tribunal in any case had accepted that the Petitioner had completed 240 days so as to entitled to the benefits of the workman and protection of Industrial Disputes Act. The Respondents have not assailed this finding and neither they have assailed the finding by which their defence was struck off. Thus there is no option but to accept the finding recorded by the Tribunal that the Petitioner had completed more than 240 days so as to entitle him to the benefits of the Industrial Disputes CWP No. 4588 of 2010(O and M) 3 Act. The next question that has to be determined is whether the Petitioner is entitled to reinstatement or not. In Ramesh Kumar" case (supra) Hon"ble Supreme Court has observed as follows:

13. We are conscious of the fact that an appointment on public post cannot be made in contravention of recruitment rules and constitutional scheme of employment. However, in view of the materials placed before the Labour Court and in this Court, we are satisfied that the said principle would not apply in the case on hand. As rightly pointed out, the Appellant has not prayed for regularization but only for reinstatement with continuity of service for which he is legally entitled to. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25F. The High Court failed to appreciate that in the present case Appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court. 14) Under these circumstances, the impugned order of the High Court dated 23.12.2008 passed in CWP No. 575 of 2004 is set aside. It is not in dispute that the Appellant workman is continuing in service and learned Counsel representing him fairly stated that he is willing to forego back wages as awarded by the Labour court, the same is recorded. Consequently, the civil appeal filed by the workman is

allowed to the extent mentioned above.

Likewise, in Krishan Singh's case (supra) it has been observed as follows:

Section 11A of the Act clearly provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of CWP No. 4588 of 2010(O&M) 5 the case to direct re-instatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well-settled principles laid down by this Court for a writ of certiorari against an order passed by a Court or a Tribunal.

4. Similar view has been held by this Court in *State of Haryana v. Shri Bhoop Singh and Anr.* 2010 (3) sct 568 and *Divisional Forest Officer (Territorial), Bhiwani v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr.* 2010 (3) SCT 557.

5. In view of the aforesaid observations, the plea of the Respondent that the Petitioner was not appointed through a due process of law has also to be negated for the simple reason, that there was no material before the Tribunal from where such an inference can be derived. Since the Respondent failed to participate in the proceedings, there was no occasion for the Tribunal to refer to such a controversy.

6. Having regard to the aforesaid, I am of the considered opinion that the award of the Labour Tribunal deserves to be set aside in so far as it has declined the plea of reinstatement to the Petitioner keeping in view the observations of Hon''ble Supreme Court in Krishan Singh's case(supra). Hence, the instant petition is allowed and the Petitioner is directed to be reinstated in service with 50% back wages.