
(2010) 08 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9686 of 2009 (O and M)

The Principal Chief Conservator of Forests

APPELLANT

Vs

Mewa Singh and Another

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35B
Industrial Disputes Act, 1947 — Section 25F

Citation : (2011) 161 PLR 336 : (2011) 2 RCR(Civil) 257

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The State has filed this writ petition on behalf of the Principal Chief Conservator of Forests to impugn the award dated 6.10.2006 passed by Respondent No. 2-Industrial Tribunal-cum- Labour Court. Workman-responden". No. 1 was engaged on daily wages as labourer in Forest Department, Bhiwani, Haryana. It is averred that he failed to present himself for work in the year 1996. He, accordingly, continued to remain as such till he filed the demand notice before the Labour-cum-Conciliation Officer, Bhiwani on 25.11.2000. The Petitioner-Management filed reply to the demand notice on 9.2.2001. The dispute was referred to adjudicate before Respondent No. 2-Labour Court and the reference has been answered in favour of Respondent No. 1 directing his reinstatement with 50% back wages.

2. When the dispute was referred to adjudicate before the Labour Court, the Respondent-workman filed a claim statement containing an averment that he was employed by the Management as Mali on 20.8.1993. He had also stated that his work and conduct remained satisfactory and he completed 240 days in every calendar year of his service. The Petitioner has also averred that his services were terminated on 1.5.1997 verbally by stating that his services were no longer required. As per the workman he had continuously worked from 20.8.1993 to

30.4.1997 and that his services were terminated without issuing any notice or payment of any retrenchment compensation. He would, thus, plead violation of Section 25-F of the Industrial Disputes Act, 1947 and also the violation of various other provisions. Respondent No. 1-workman, accordingly, sought reinstatement with continuity of service and back wages.

3. The notice was served on the Management-Petitioner. Opportunity was given to file the written statement on payment of cost of Rs. 200/-. The case was adjourned to 9.4.2003. On that date neither the cost was paid nor the written statement filed. By invoking provisions of Section 35B of Code of Civil Procedure, the defence of the Petitioner management was struck off. On 19.11.2003, when the case was fixed for evidence of the workman, an application was filed for setting aside the order dated 9.4.2003. The Respondent-workman had not raised any objection to the plea made in the application and the said order was set aside on payment of Rs. 1000/- as costs. The case was then fixed for filing of written statement for 17.1.2004. On that date again the cost was demanded, but the same was not paid. The defence of the Petitioner-Management was again struck off in view of the provisions of Section 35-B of Code of Civil Procedure.

4. The Respondent-workman was directed to adduce his evidence and he himself examined as WW-1. He also examined Mohinder Singh, Forest Guard as WW-2 and closed his evidence. The Labour Court in this background found that the main reason to believe the averment made, was that the Petitioner-management had failed to produce the service record of the workman. Though the defence was struck off, still the record of muster roll, entry register, attendance register and payment of vouchers etc. was not produced. Since the Petitioner-Management had failed to produce the record, adverse inference was drawn against the Management. The workman had clearly stated that he had worked for 240 day in every calendar year, which statement had gone unrebutted and was required to be believed.

5. The Labour Court may not fully justified in requiring the workman to produce evidence once it has decided to strike off the defence of the Petitioner-Management. The averment made in the claim statement was required to be taken as true for the purpose of any order which the Labour Court was entitled to pass. Still the Labour Court required the workman to produce evidence, which he did produce and he averred that he had completed 240 day in one calendar year. This evidence has gone unrebutted as there is no evidence projected contrary to the same. The necessary consequence was that this evidence and averment made in the claim statement was required to be taken as true for the purpose of passing of this order. Since the Labour Court has allowed the claim of the Respondent-workman with regard to the reinstatement, but allowed only 50% back-wages from the date of demand notice, the submission made by Mr. Rathee that Labour Court was required to see the evidence, even if the defence was struck off firstly is not legally sound and secondly the Respondent-workman had led evidence showing that he had worked for 240 days in a calendar year, which

had gone un rebutted and was required to be accepted as such. This can neither be said to be a case where sufficient material has not been produced before the Court. This submission that some other orders could be passed u/s 35B of CPC also is misconceived. Once the cost is awarded, then the payment of such costs, on the next date following the date of such order, shall be a condition precedent to further production of the defence when the Defendant was ordered to pay such costs. The necessary consequence has to be that the right of the defence was required to be closed. There is thus no cause made out to interfere in the impugned award.

6. In addition, counsel for the Respondent-workman has also drawn my attention to a view taken by this Court in the case of The Principal Chief Conservator of Forest Haryana Panchkula and Anr. v. Pawan Kumar and Anr. 2009 (3) SCT 243. In this case, in an identical issue, Labour Court has drawn adverse inference against the Petitioner-management and had allowed claim of the workman, when the Management had failed to produce the evidence.

7. The writ petition is, thus, deserves to be dismissed. It is so ordered.