IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.12544 of 2014
Date of decision:03.07.2014

Divisional Forest Officer (T), Forest Division (Chief Forest Conservator, Rohtak)

....Petitioner

Versus

Foolpati @ Foolar & another

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Rajiv Prashad, DAG, Haryana, for the petitioner.

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G.S.Sandhawalia J.(Oral)

1. The present writ petition has been filed against the award dated 10.01.2014 whereby the respondent-workwoman has been directed to be reinstated with continuity of service and 50% back wages, by the Labour Court, Rohtak, from the date of the demand notice, i.e., 03.11.2008.

2. Perusal of the paperbook would go on to show that in the demand notice (Annexure P1), filed under Section 2-A of the Industrial Disputes Act, 1947 (for short, the 'Act'), the claim of the workwoman was that she was working as Baildar-cum-Mali with the Divisional Forest Officer, Rohtak from 1997 to 31.12.2006. The details of the officers under whom she had worked were named specifically. It was the case of the workwoman that on 01.01.2007, she was not allowed to join even though she was ready to join and work and the juniors were still working after her termination of service. Accordingly, it was submitted that there was violation of the mandatory provisions of the Act. It was contested on the ground that she was appointed only in the year 1999 as a daily wage labourer. It was mentioned in the reply that she had left the work on her own and had worked only for 124 days and thereafter, had left the work. Thereafter, the matter

was referred to the Labour Court and the claim statement was filed on the same set of allegations. No written statement was filed despite imposition of cost of ₹500/- and the defence of the Management was struck off vide order dated 04.04.2011 (Annexure P4) under Section 35-B of the Code of Civil Procedure. The petitioner-Department filed an application for setting aside the said order. Thereafter, the Labour Court, on the basis of the statement of the workwoman and also on the statement of Shamsher Singh, Range Officer, WW2, noticed that the departmental witness had taken time twice to produce the records but had not produced the entire summoned record. Accordingly, an adverse inference was drawn for the non-production of the record against the respondent-Management and it was held that neither the written statement had been filed at the appropriate state nor the record had been produced, despite direction and the necessary relief has, thus, been granted.

3. Counsel for the State has submitted that there was delay in raising the industrial dispute since the workwoman had only worked in the year 2000-2002 and that also for 124 days and therefore, she was not entitled to claim compensation under Section 25-F of the Act.

4. After hearing counsel for the State and also Annexure P5, this Court is of the opinion that the said submission is not liable to be accepted. Admittedly, the demand notice was issued on 03.11.2008 on the allegation that she had not been allowed to join duty from 01.01.2007 and therefore, there is no such delay as submitted. The only reply to the notice is that she had not completed 240 days and only worked for 124 days. For the said fact, the petitioner-Department was supposed to set out its case in a written statement but it chose not to file the same despite cost being imposed under Section 35-B CPC and the defence of the Department was then struck off. A subsequent application

would not be maintainable in view of the Full Bench judgment of this Court in ***Anand Prakash Vs. Bhushan Rai AIR 1981 (P&H) 269***. Merely because a subsequent application is filed for recall of the order, that would not absolve it of its fault earlier and in such circumstances, the provisions of Section 35-B CPC would be rendered nugatory if such application is to be allowed on asking, since no valid explanation has been given in the same. The said order dated 04.04.2011 was never challenged before this Court and has become final. The negligent attitude of the Department is further depicted from the perusal of the award since even if the defence was struck off from the record which the workwoman had summoned, it could have been shown to the Court that the workwoman had not completed 240 days of service. But inspite of directions issued, the record was not produced. Relevant observation of the Labour Court regarding the non-production of the entire record read as under:

> "To prove fact continuous employment with the respondent/management summoned the witness from January 1997 to 31.12.2006 she has also summoned the witness from the office of the respondent/management alongwith her service record. There upon Sh. Shamsher Singh, Range Officer appeared as WW-2 but despite giving the statement in the Court twice to produce the summoned record, he did not produce the entire summoned record. However, he has deposed that he has brought the muster roll issue register for the year 1998 to 2006 but could not bring the muster rolls issue register for the period from 1992 to 1998. He has further deposed that in the month of March 1998 six muster rolls were issued and he has brought only 4, in the month of April 1998, 17 muster rolls were issued and he has brought only 4, in the month of June 1998, 15 muster rolls were issued and he has brought only 13, in the month of January 2000, 19 muster rolls were issued and he has brought only 14, in the month of February 2005, 24 muster rolls were issued and he has brought only 15, in the month of March 2005, 14 muster rolls were issued and he has brought only 8, in the month of April 2005, 23 muster rolls were issued and he has brought only 3, in the month of May 2005, 27

> muster rolls were issued and he has brought only 3, in the month of November 2005, 16 muster rolls were issued and he has brought only 2, in the month of December 2005, 16 muster rolls were issued and he has brought only 9, he has not brought the muster rolls for the months of June to October 2005, in the month of January 2006, 16 muster rolls were issued, he has brought only 9, in the month of February 2006, 7 muster rolls were issued and he has brought only 6, in the month of March 2007, 7 muster rolls were issued and he has brought only 4, in the month of November 2006, in the month of April 2006, 7 muster rolls and in the month of May* 2006, 10 muster rolls were issued, in the months of June, July and August 2006, 7 muster rolls were issued in September 2006, 12 muster rolls were issued, in October 2006, 3 muster rolls were issued in November 2006, 4 muster rolls were issued and in December 2006, 5 muster rolls were issued. He has deposed that he has not brought the muster rolls from April 2006 to December 2006."

5. The relevant record which was to be produced since the termination was alleged to be on 31.12.2006 was for the year backwards from December, 2006. A categorical finding of fact has been recorded that the petitioner-Department had not produced the muster rolls from April, 2006 to December, 2006 and in such circumstances, an adverse inference was rightly drawn by the Labour Court. Reliance can be placed upon the observations in a three-Judge Bench judgment of the Apex Court in ***R.M.Yellatti Vs. The Assistant Executive Engineer 2006 (1) SCC 106*** wherein it has been held that once such direction has been issued and the Department fails to produce the record, then an adverse inference has to be drawn since in a case of a daily wager, the workman would have no record available and it is only the Department who can show and demonstrate as to what period the workman had worked. The said observations would be directly applicable in the facts and circumstances of the present case because the categorical case of the Department is that the workman had not worked for 240 days but has failed to produce the said record. Relevant

observation read as under:

> "17. 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 under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated 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 workman stepping in the witness box. This burden is discharged upon the workman 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 workman (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/workman will not suffice in the matter of discharge of the burden placed by law on the workman 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 workman 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."

6. Accordingly, in view the said observations and due to the negligent attitude of the Department, which, now, it cannot deny, the legal right of the respondent-workwoman, who has been out of service since January, 2007. The Labour Court has also restricted the relief of 50% back wages only and not granted the full back wages keeping in view the fact that the workwoman would have been employed elsewhere to sustain herself during that period. In such

circumstances and keeping in mind the fact that this Court is only exercising supervisional powers, the present writ petition is liable to be dismissed. It is to be noticed time an again that this Department is a major litigant in labour matters and the officials of the Department do not cooperate despite various directions being issued by the Labour Court and neither produce the records. Various direction have been issued by this Court in CWP No.11216 of 2010 titled *Sub-Divisional Officer Vs. Satish Kumar*, in which the Chief Secretary, Haryana was also directed to file affidavit and the data was placed on the file of the case as to the number of cases pending with all department. Inspite of that, the State continues to flout the said directions and the resultant sufferers are the workmen who have completed the requisite statutory period and inspite of that, their legal rights are violated.

7. Accordingly, keeping in view the facts and circumstances of the case, this Court is of the opinion that the back wages which have been now granted, should be recovered from the concerned officials who was negligent in his duties in not ensuring that the record is produced and for non-filing of the written statement before the Labour Court.

8. With the abovesaid observations, the present writ petition is dismissed in limine.

03.07.2014 (G.S.SANDHAWALIA)
sailesh JUDGE