

(1988) 12 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1046 of 1981

Jai Krishan

APPELLANT

Vs

Pepsu Road Transport
Corporation, Patiala
and another

RESPONDENT

Date of Decision: Dec. 14, 1988

Hon'ble Judges: Jai Singh Sekhon, J

Bench: Single Bench

Advocate: Surjit Singh, with Mr. Gurdev Singh, for the Appellant; Manjit Singh Khaira with Mr. J.S. Bhatti, for the Respondent

Final Decision: Allowed

Judgement

J.S. Sekhon, J.

The services of the Petitioner were terminated by Respondent No. 1, but the Presiding Officer, Labour Court, Patiala, vide his award dated December 28, 1979, held the same to be illegal and ordered his reinstatement. The Labour Court did not award any back wages to the Petitioner on the ground that he had failed to prove being not employed during the period he remained idle. The Petitioner, in this Civil Writ Petition has challenged the aforesaid award of the Labour Court of Patiala mainly on the ground that the onus to prove whether the Petitioner remained gainfully employed during the period of his forced idleness was on the employer and not on the employee.

2. I have heard Mr. Surjit Singh Senior Advocate, and Mr. Manjit Singh Khaira, Senior Advocate, the learned Counsel for the parties.

3. In view of the finding, of the Supreme Court [Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others](#), to the effect that onus lies on the employer to prove that the employee was gainfully employed during the period of enforced idleness as well as the view of the Full Bench of this Court in Hari Palace, Ambala City v. The Presiding Officer Labour Court (1979) P.L.R. 720 there is no escape

but to conclude that Labour Court had taken a wrong view in holding the onus in this regard lay on employee. It appears that this aspect of the matter regarding the burden to prove was not brought to the notice of the Presiding Officer of the Labour Court. Thus, in this situation the Petitioner is entitled to all the back wages because the employer had failed to establish that he remained gainfully employed during this period.

4. Consequently, the impugned part of the award of the Presiding Officer, Labour Court, is hereby set aside by accepting this Writ Petition and allowing the Petitioner the entire back wages for the period of his enforced idleness. The parties are left to bear their own costs.