(2001) 05 P&H CK 0140

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 15811 of 2000

Ambika Prashad	APPELLANT
Vs	
Punjab Urban Planning and Development Authority, Chandigarh Sham Lal Vs Punjab Urban Planning and Development Authority, Chandigarh	RESPONDENT

Date of Decision: May 29, 2001

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2, 25

Hon'ble Judges: S.S. Sudhalkar, J

Bench: Single Bench

Advocate: Mr. B.R. Mahajan, for the Appellant; Mrs. Jai Shree Thakur, for the Respondent

Final Decision: Allowed

Judgement

S.S. Sudhalkar, J.
In both these cases i.e. C.W.Ps.

15811 and 15398 of 2000 the facts being similar and the law points to be discussed being the same, they are heard together and are being disposed of by this common judgment. For the purpose of reference, I shall be referring to the papers concerning the case of Ambika Prashad, petitioner of C.W.P. No. 15811 of 2000.

2. The case of the petitioner is that he joined service as Chpwkidar with the respondent No. 1 on 1.1.1988 and his services were terminated on 5.4.1991. He issued a demand notice on 5.6.1991. The case of the petitioner is that he had completed 240 days of service and was entitled to the protection u/s 25-F of the Industrial Disputes Act (hereinafter referred to as the "Act"). The respondent"s contention before the Labour

Court is that the petitioner has not completed 240 days of service. The crucial point to be seen is that the respondent has not produced the necessary record. Annexure P/4 is an application given by the petitioner to the Labour Court to get the following record produced :

"1. Employment & Personal files of concerned workman.

2. Payment & attendance register from 01-01-87 to 30-4-1991.

3. Logbook from 01-01-90 till 30-04-91

4. All correspondence and letters pertaining to concerned workman."

The Labour Court also ordered the record to be produced before it but the same was not produced except the three muster rolls i,e. of January, February, 1991 and September, 1990. (In other case, muster rolls produced for the months of Sept, 1989, April, July and August, 1990). The Labour Court has not drawn the adverse inference against the respondent for the same. On the contrary it has observed that no motive can be attributed to the management for withholding of the record pertaining to ihe employment of the workman and there is no cogent evidence on the record that some other muster rolls pertaining to the employment of the workman, were prepared by the management or that these were destroyed by the management to escape from the liability of reinstatement of the workman with continuity of service.

3. The payment and attendance registers, and logbook could have thrown light on the issue in dispute as to whether the workman had worked for the period as alleged. It is not open for the person having best evidence, to dodge the order of the Court and then to say that the burden of proof is on the other side. In case of Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, , it has been observed by the Supreme Court that a person in possession of the best evidence has to produce the same and if not produced adverse inference can be drawn against the said party irrespective of the fact that onus of proof does not lie on him and that he was not called upon to produce the same. This principle directly applies to the facts of the present case and adverse inference can be drawn against the respondent. Therefore, there is no reason as to why it should not be hold that the petitioners hav completed 240 days of services as alleged by them.

4. In these cases, apart from not producing the best evidence, themselves, the respondents have chosen to defy the orders of the Labour Court also when the Labour Court asked the evidence to be produced. Therefore, these cases are onmuch better footing than that of Gopal Krishnaji Ketkar case (supra).

5. In view of these reasons, the say of the petitioners that they have completed 240 days, as alleged by them, has to be accepted. The consequence is that they deserve to be reinstated with continuity of service and back wages from the date of re-instatement.

6. As a result, these writ petitions are allowed. The awards of the Labour Court in both these cases are set-aside and the petitioners are ordered to be re-instated with continuity of service and back wages from the date of demand notice(s).

7. Petitions allowed.