

State of Haryana Vs Naresh Kumar

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 12, 2001

Acts Referred: Industrial Disputes Act, 1947 " Section 2, 25F

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

Bench: Single Bench

Advocate: Mr. Rattan Singh, Assistant A.G, for the Appellant; Mr. M.L. Bagga, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.S. Sudhalkar, J.

This writ petition is filed by the employer challenging the award of the Labour Court dated 2.11.1998 (copy annexure

P/5) vide which respondent No. 1 was ordered to be reinstated in service with full back wages.

2. The respondent-workman was appointed on 16.7.90 and his services were terminated on 16.7.1991. The case of the petitioner is that the

respondent has not worked for 240 days in the year immediately preceding the date of termination of his service.

3. I have heard learned counsel for the petitioner.

4. Counsel for the petitioner argued that the Labour Court has erred in holding that the respondent had completed 240 days of service. The

Labour Court has calculated the non-working days in the number of days the respondent had actually worked. It has observed in para 8 of the

award as under :

8. From the evidence on record it is quite clear that in addition to 221 days, as disclosed in Ex.M-1 appended with written, statement, the

workman worked for 4 more days in each month in addition to working on 15.8.90, 2.10.1990 and 26.1.1991 and that he was not allowed

week-end holidays as required under the Act and in fact he has been shown absent on those days. When all those days are included and counted

as working days the total number of working days of the petitioner comes out to be 259 days within a period of 12 months preceding the day of

termination of his service, even if the days of termination of his service is counted as 1.7.1991. In this way, the petitioner is certainly entitled to

reinstatement with continuity of service and full back wages as no notice, notice pay or compensation was given to him.

5. The respondent has contended in his claim statement that he was paid Rs. 812/- per month. This statement he has made in para 3 of his claim

statement, copy of which has been produced at annexure P/3. Reply to the claim statement has been filed by the petitioner. Copy of the same is at

annexure P/4, In reply to para 3, it has been stated that the respondent was engaged on daily wage basis. The mode of payment and the days for

which the payment was made has to be decided on evidence and this evidence was certainly available with the petitioner. It is not shown that such

evidence is produced in the court below. This being the position there cannot be any reason for not accepting the finding of the Labour Court that

the respondent has completed more than 240 days of service including the paid holidays.

6. Counsel for the respondent has relied on the case of Workmen of American Express International Banking Corporation Vs. Management of

American Express International Banking Corporation, . It has been held by the Supreme Court in that case as under :

...The expression which we are required to construe is actually worked under the employer. This expression according to us, cannot mean those

days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the

employment of the employer and for which he had been paid wages neither under express or implied contract of service or by compulsion of

statute, standing orders, etc.....

7. In view of the facts of this case, the judgment of the Supreme Court will be directly applicable. Therefore, there is no infirmity in the award of

the Labour Court.

8. No other argument has been advanced.

9. In view of the above reasons, this writ petition deserves to be dismissed and is hereby dismissed.

10. Petition dismissed.