(2014) 08 P&H CK 0155

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4466 of 2014

Tejpal		APPELLANT
	Vs	
Presiding Officer,Industrial Tribunal-cum-Labour Court		RESPONDENT

Date of Decision: Aug. 12, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10, 25F

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: Baljinder Singh Virk, Advocate for the Appellant

Final Decision: Dismissed

Judgement

G.S. Sandhawalia, J.

The challenge, in the present writ petition, is to the award dated 26.7.2012, whereby the reference has been decided against the workman by holding that there is no relationship of the employer and employee especially when the workman himself has not stepped into the witness box in support of his case. Vide subsequent order dated 7.8.2013, the application, filed for setting aside the impugned award, was also dismissed, though it has not been specifically challenged in the present proceedings.

2. Perusal of the paper-book would go on to show that the allegation of the petitioner is that he had worked from 22.4.2002 as a regular workman on the salary of Rs. 3,000 per month upto 15.10.2004 with the respondent-Management. Accordingly, he alleged that the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (In short "the Act") were not complied with and no retrenchment compensation had been paid to him. The plea taken by the Management was that the workman was employed by the contractor, namely M/s.

Veer Enterprises and no relationship of employer and employee existed. The workman had examined Babu Lal, Clerk and Atar Singh, Assistant but he himself did not step into the witness box. In the absence of the workman himself deposing, the reference was decided against him on 26.7.2012. The award was published on 7.8.2012 and thereafter an application for setting aside of the impugned award was filed on 19.11.2012, after a period of 31/2 months. The said application was contested. It was noticed that several opportunities including last opportunity were granted to the workman to conclude his evidence. Reliance had been placed upon a medical certificate issued by some private doctor to justify his absence, which was rejected. The said application was also dismissed as the Court had become functus officio. Reliance has been rightly placed on the judgment rendered by the Apex Court in Sangham Tape Company Vs. Hans Raj, Hence, the present writ petition has been filed.

3. Vide order dated 21.4.2014, an opportunity was given to the workman to place on record deposition of Babu Lal, Clerk and Atar Singh, Assistant and the zimini orders. The order dated 21.4.2014 reads as under:-

Counsel for the petitioner submits that the workman had examined Babu Lal, Clerk as PW-1 and Atar Singh, Sr. Assistant as PW-2 in support of his case since the management has denied the relationship of the employer-employee and has taken the plea that the petitioner-workman was an employee of the contractor. He prays for some time to place on record the said depositions and also the zimini orders.

4. Counsel for the petitioner further submits that the petitioner is not in touch with him and he is not in a position to comply with the above said order. It is settled proposition of law that the initial onus of proving the relationship of employer and employee is upon the workman himself. He has not stepped into the witness box and deposed to this effect. The failure has, accordingly, led to an adverse inference being drawn against him and the reference was rightly rejected in the above said circumstances.

5. Reliance can be placed upon the judgment rendered by the Apex Court in R.M. Yellatti Vs. The Assistant Executive Engineer, wherein the following principles were laid down:

15. 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 u/s 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. In such circumstances, no fault can be found in the well reasoned order passed by the Labour Court. The subsequent order dismissing the application filed on 19.11.2012 also was equally well justified since the Labour Court has become functus officio as the award had been published on 7.8.2012. It was held by the Supreme Court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, that the Labour Court has no jurisdiction once the award has been published. Accordingly, keeping in view the settled principle of law, there is no scope for interference in the well reasoned order passed by the Labour Court and the present petition is dismissed, in limine.