

(2014) 05 RAJ CK 0182

Rajasthan High Court (Jaipur Bench)

Case No: Civil Writ Petition No. 13396/2011

Executive Engineer,  
PHED

APPELLANT

Vs

Prabhu Lal and  
Another

RESPONDENT

---

Date of Decision: May 1, 2014

Hon'ble Judges: Mohammad Rafiq, J

Bench: Single Bench

Advocate: Saurabh Saraswat, Dy. Govt. Counsel, Advocate for the Appellant; Manoj  
Choudhary, Advocate for the Respondent

Final Decision: Partly Allowed

---

### Judgement

@JUDGMENTTAG-ORDER

Mohammad Rafiq, J.

This writ petition has been filed against the award dated 22.8.2008 passed by the Labour Court, Kota.

2. Contention of learned Deputy Government Counsel for the petitioner is that respondent has been held to work for 240 days with the petitioner for a period from 25.5.1988 to 26.6.1989 by the Labour Court. Even though according to the petitioner, his actual working period was far less than 240 days. Learned Deputy Government Counsel argued that the Labour Court has erred in law in drawing adverse inference against the petitioner for not producing the muster rolls of the period from April, 1989 to July, 1989. It is contended that there was no direction by the Labour Court to produce the muster rolls. The muster roll of the respondent-workman was not produced because the respondent-workman was not shown to have work with them during that period. This fact was very much stated by their witness Harshvardhan Sharma, Assistant Engineer. Learned Deputy Government Counsel argued that the muster rolls have been produced now before

this Court with an application, which does not show that respondent-workman worked with the petitioner during the aforesaid period. It is also argued that there was delay in making reference.

3. Shri Manoj Choudhary, learned counsel for the respondent submits that petitioner withheld the record and therefore the Labour Court was justified in drawing adverse inference against the petitioner and held that respondent worked for 240 days. There was no delay in making reference. The respondent approached the department number of times and thereafter filed application. Subsequent delay in making reference is at the end of the petitioner.

4. On hearing learned counsel for the parties and perusing the material on record, I find that in the award there was no direction to the department to produce the muster rolls of the aforesaid period. The muster rolls now produced contends that the respondent did not work for aforesaid period. This Court does not deem it appropriate to accept the evidence directly. However, considering that this was the sole basis on which the Labour Court held that the respondent worked 240 days and thus there was breach of provisions of Section 25F of the Act. It is therefore deemed appropriate to remand the matter to the Labour Court with direction that the management shall produce the affidavits of witnesses in support of muster rolls and that workman shall be entitled to cross examine their witnesses and produced evidence in rebuttal to disprove the aforesaid assertion of the management. The Labour Court may pass the fresh award within six months from the date of receipt/production of copy of this order before it.

5. The writ petition is accordingly allowed in part.