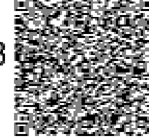
2025:PHHC:024622-DB 

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IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

LPA-391-2025 (O&M)
Decided on: February 18, 2025

Sushil Kumar

….Appellant

versus

Presiding Officer, Industrial Tribunal, Jalandhar and others

….Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present:- Mr. Deepak Arora, Advocate for the appellant.

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SUDHIR SINGH, J. (ORAL)

CM-993-LPA-2025

For the reasons stated in application, same is allowed. Delay of 432 days in re-filing the appeal is condoned.

CM-994-LPA-2025

For the reasons stated in application, same is allowed. Delay of 17 days in filing the appeal is condoned.

Main case (O&M)

The present intra Court appeal is directed against the order dated 03.11.2023 passed by learned Single Judge, in CWP-9942-2015, whereby the said writ petition filed by the appellant, has been dismissed being bereft of any merit.

2. Before the learned Single Judge, the appellant had laid challenge to the award dated 23.11.2012 (Annexure P-6 with the writ petition) passed by the Presiding Officer, Industrial Tribunal, Jalandhar (for short 'the Tribunal') whereby, the reference of an industrial dispute raised by the appellant as regards termination of his services, had been answered against him.

3. The facts, in brief, as noticed by the learned Single Judge in the impugned order, are that the appellant had claimed to have been appointed as Sewerman by the respondent-Management at a salary of Rs.2,255/- per month. He further claimed to have joined the duties on 01.02.1999 and that his services were terminated on 01.03.2001, without issuance of any charge-sheet or notice nor any inquiry was conducted and without payment of retrenchment compensation.

4. The respondent-Management took the plea that the appellant had been engaged as a casual labour on daily wage basis approved by the PWD (B&R), Punjab, as per the necessity. It was further asserted by the respondent-Management that the appellant had never been appointed against any post and was also not issued any appointment letter. It was further asserted by the respondent-Management that the appellant had not completed 240 days of service at any point of time.

5. The Tribunal, after considering the evidence on record and taking into consideration the rival contentions, had answered the reference against the appellant.

6. Learned counsel appearing on behalf of the appellant has contended that the impugned order passed by the learned Single Judge suffers from perversity, inasmuch as, while dismissing the writ petition, the learned Single Judge has lost sight of the vital fact that the appellant had worked with the

respondent-Management from 01.02.1999 till 01.03.2001 on regular basis. It is further argued that the procedure as contemplated under the Industrial Disputes Act, 1947 (for short 'the Act') has not been followed while retrenching the services of the appellant. It is also pointed out that neither any charge-sheet was issued nor any domestic enquiry was conducted, and the respondent-Management had also failed to pay retrenchment allowance to the appellant. It is also argued that once, the appellant had pleaded before the Tribunal that he had continuously worked from 1999 till 2001, it was for the respondent-Management to produce requisite evidence to negate the said plea, but nothing of the sort was done. It is also argued that the appellant had moved various applications before the Tribunal for summoning all the relevant record from the respondent-Management regarding payment of salary etc. to the appellant, but the respondent-Management had intentionally not produced the said record. It is thus, argued that the findings recorded by the Tribunal as also by learned Single Judge, are liable to be set aside.

7. We have heard the learned counsel for the appellant and have also gone through the file of the case, including the impugned order passed by learned Single Judge.

8. As noticed by learned Single Judge, the Tribunal had recoded that the onus to prove issue No.1 was upon the appellant-Workman. It was further recorded that the appellant-Workman admitted in his cross-examination that no appointment letter had been issued to him and that he was also not having any attendance record. It was further noticed that in his testimony, the appellant-Workman had also admitted that he used to work on daily wages and would get such wages at the end of the month, as per the days he had worked. Thus, it was concluded by the Tribunal that the appellant-Workman had failed to prove that

he was appointed on 01.02.1999 and that his services were terminated on 01.03.2001. Besides that, he also failed to prove that he had worked for 240 days immediately before the alleged date of retrenchment of his services. Learned Single Judge has accordingly, found that the appellant-Workman had failed to prove "employee" and "employer" relationship between him and the respondent-Management, besides the fact that he had completed 240 days work under the respondent-Management in terms of Section 25-B of the Act. It was further found that apart from not being able to prove the issuance of appointment letter or payment of wages, the appellant-Workman had also failed to examine any co-worker in support of his claim.

9. The plea of the appellant-Workman that since the respondent-Management did not produce the relevant record, an adverse inference ought to have been drawn against him, did not also find any favour with the learned Single Judge. In this regard, it was observed that drawing of adverse inference was optional and not obligatory and the same depends upon the facts and circumstances of each case. It was further found that apart from that plea, there was no assertion on the part of the appellant-Workman that the respondent-Management had suppressed any relevant record. While relying upon various judgments of the Hon'ble Supreme Court, it was observed that a finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding, the Court or the Tribunal had erroneously refused to admit admissible and material evidence.

10. We find that the findings recorded by learned Single Judge do not suffer from any perversity. It is relevant to note here that drawing of an adverse inference would only come into play, if the appellant-Workman had discharged burden to prove the issue framed in this case. As noticed above, the onus to

prove issue No.1 was upon the appellant-workman. The appellant-Workman did not produce any appointment letter nor did he produce any record in respect of respective salary from the respondent-Management. More so, during his cross-examination, he had admitted that he used to work on daily wages and that no appointment letter had ever been issued to him. Apart from that, he had failed to examine any co-worker in support of the case set up by him.

11. In order to attract the provisions of the Act, a Workman must establish on record that he was appointed by the Management; that he had been paid salary on regular basis; that his services had been dispensed with, without complying with the provisions of the Act, and that he had not been paid any retrenchment compensation, as the case may be. However, in the instant case, having failed to establish on record and prove said requirements, we find that both, the learned Single Judge and the Tribunal, were justified in negating the claim of the appellant-Workman.

12. In view of the above, we do not find any illegality in the impugned order, which may warrant any interference by this Court.

13. No other point has been urged.

14. Hence, the present appeal is dismissed.

15. Pending application(s), if any, shall stand disposed of.

(SUDHIR SINGH)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 18, 2025
mahavir
Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No