Before Rajiv Bhalla & Dr. Bharat Bhushan Parsoon, JJ.

JASMER SINGH —*Appellant*

versus

STATE OF HARYANA & OTHERS—*Respondents*

LPA 2245 of 2011

September 19, 2014

Letters Patent, 1919 - Cl. X - Letters Patent Appeal - Labour Law - Industrial Disputes Act, 1947 - S.25-F - Challenge to order of Single Judge - Workman-Appellant claiming having completed 240 days preceding the date of his termination by counting employment on daily wages in two separate sub-divisions - Workman-Appellant further claiming that his working days in one sub-division as well as muster roll ignored - Held, the facts and law both against the Workman-Appellant - Workman-Appellant had voluntarily left job in one sub-division to join a new sub-division and the appointing authority in both the sub-divisions was distinct and separate - Further, the nature of the job in the two sub-divisions was also different - Hence, service rendered in one sub-division not liable to be transferred to the other sub-division for computing the total number of days in employment - Appeal dismissed and Order of Single Judge upheld.

Held, that the Industrial Tribunal-cum-Labour Court, while holding that the appellant had completed 240 days, counted employment on daily wages in Sub-Division No.8 as also in Sub-Division No.6 on the premise that Executive Engineer i.e. appointing and dismissing authority of daily wagers of both the Sub-Divisions i.e. No.8 and No.6 was the same. In the writ petition filed by the respondents challenging the said Award, learned Single Judge had noticed an error apparent on record i.e. Sub-Divisions No.8 and No.6 were independent offices which were also set apart and different as these were employing different labour force and were also under administrative control of different Executive Engineers.

(Para 5)

Further held, that when both affidavits furnished by Executive Enginner of the respondents are examined in the interface of relevant muster roll (Ex.WX), there does not remain any confusion that the appellant/ workman had worked in Sub-Division No.8 upto August, 1993 and in fact had worked only for 231 days in total. He had left the job of his own thereafter and had joined his fresh employment in Sub-Division No.6 somewhere in September, 1993 and had worked there till December, 1993 for 96 days in total. It also becomes evident that muster roll (Ex.WX) produced in evidence by the appellant pertains to Sub-Division No.6 and not to Sub-Division No.8. Learned Single Judge had noticed these facts in the impugned judgment. Relevant portion of the impugned judgment for ready reference is appended as below:

> "The workman pleaded that he had worked for 310 days in Sub-Division Nos. 8 and 6 when taken up together. It was the stand of the workman that both these Sub-Divisions were under the same officer and, therefore, the period spent by him in both these Sub-Divisions was to be taken up together and counted towards the days during which the workman had put in service in 12 preceding months' from the date of his termination of service whereas the Management examined MW-1 Vipin Sharma, SDO, who had stated that the workman was appointed in Sub-Division No. 8 on muster roll daily wage basis from January, 1993 to August, 1994 and he himself left the work thereafter. He further stated that from October, 1993 to December, 1993, the workman worked with some other Sub-Division No. 8. The Sub-Division No. 6, Karnal, where the workman performed his duties from October, 1993 to December, 1993, was doing the work of construction of road and bridge. He has categorically stated that the administrative control of Sub-Division No. 6 and Sub-Division No. 8 is under the different Executive Engineers and the nature of work also is different of two Sub-Divisions. He had further stated that the construction of National Highways and the maintenance work being performed by Division No. 8 is one which is assigned by the Ministry of Surface, Government of India. The workman voluntarily left the job in September, 1993 and joined the new Sub-Division No. 6 in October, 1993 where he continued to work up to December, 1993. It was, therefore, the

specific stand of the petitioner-Management that the appointing authority of two Sub-Divisions were different XENs and further the said Sub-Divisions had different nature of job, which was being performed by them. It is not the case of the workman that his services were transferred from Division No. 8 to Division No.6, in compliance of which, he had joined his duties in Sub-Division No. 6 from Sub-Division No. 8. That being so, the stand of the Management is fully justified and thus, the Award passed by the Labour Court cannot be sustained."

These findings of learned Single Judge could not be challenged by the appellant. Facts and law both are dead against the appellant.

(Para 9)

Abha Rathore, Advocate, *for the appellant.*

Mamta Singla Talwar, Assistant Advocate General, Haryana, *for the respondents.*

DR. BHARAT BHUSHAN PARSOON, J.

(1) In this Letters Patent Appeal under Clause X of the Letters Patent, judgment of the learned Single Judge dated 7.4.2010 in CWP No.9532 of 2001, is under challenge.

(2) Impugning the judgment, counsel for the appellant/workman claims that the fact of his completion of 253 days from January, 1993 to September, 1993 in employment in Sub-Division No.8 irrespective of working days of Sub-Division No.6, was ignored in the impugned judgment resulting in grave prejudice to the appellant. It is further claimed that learned Single Judge failed to notice that the appellant had also produced muster roll for September, 1993 (Exhibit WX before the Labour Court), wherein he is shown to have worked for 22 days for the said month.

(3) Claiming that he had completed 240 days preceding the date of his termination and thus there was violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called as, the Act), the appellant prays for reversal of the impugned judgment, restoration of the Award (Annexure P-4) of Labour Court and reinstatement with continuity of service and full back wages.

(4) Learned counsel for the parties have been heard while going through the paper book.

(5) The Industrial Tribunal-cum-Labour Court, while holding that the appellant had completed 240 days, counted employment on daily wages in Sub-Division No.8 as also in Sub-Division No.6 on the premise that Executive Engineer i.e. appointing and dismissing authority of daily wagers of both the Sub-Divisions i.e. No.8 and No.6 was the same. In the writ petition filed by the respondents challenging the said Award, learned Single Judge had noticed an error apparent on record i.e. Sub-Divisions No.8 and No.6 were independent offices which were also set apart and different as these were employing different labour force and were also under administrative control of different Executive Engineers.

(6) Plea of the appellant/workman that such finding could not have been recorded in the writ petition as it related to facts of the case, is a misnomer. Apparent defects in the impugned Award are not to be overlooked. No fishing expedition has been undertaken by the learned Single Judge in deciding the writ petition of the Management while passing the impugned order.

(7) Faced with clear finding of the learned Single Judge that plea of the appellant having completed more than 240 days in 12 months preceding the date of his termination taking his daily wage employment in Sub- Division employment Nos.8 and 6 together is factually incorrect, the appellant has come up with a new stand that even if his employment in Sub-Division No.8 alone is taken for counting the period of 240 days, it exceeds the statutory period, if counted backward from the date of his termination. After examining this aspect, on 10.4.2013 this Court passed an order requiring further information from the respondents. Relevant portion of the said order reads as under:

> "After hearing learned counsel for the parties for some time, we feel that since there is a dispute as to whether the appellant had worked for 240 days in the aforesaid Sub Division or not, let the respondent-State file an affidavit supported by muster roll of the Sub Division."

(8) On examination of the affidavit filed by the respondent, a further clarification was sought from the respondents vide order dated 2.7.2013. Relevant portion of the said order is as follows:

> "There appears to be apparent conflict between the written statement filed by the respondents, before the Labour Court, and the affidavit, dated 20.5.2013. The respondents are, therefore, directed to clarify this ambiguity, and also produce the original of Ex.WX on the next date of hearing."

(9) When both affidavits furnished by Executive Enginner of the respondents are examined in the interface of relevant muster roll (Ex.WX), there does not remain any confusion that the appellant/workman had worked in Sub-Division No.8 upto August, 1993 and in fact had worked only for 231 days in total. He had left the job of his own thereafter and had joined his fresh employment in Sub-Division No.6 somewhere in September, 1993 and had worked there till December, 1993 for 96 days in total. It also becomes evident that muster roll (Ex.WX) produced in evidence by the appellant pertains to Sub-Division No.6 and not to Sub-Division No.8. Learned Single Judge had noticed these facts in the impugned judgment. Relevant portion of the impugned judgment for ready reference is appended as below:

> "The workman pleaded that he had worked for 310 days in Sub-Division Nos. 8 and 6 when taken up together. It was the stand of the workman that both these Sub-Divisions were under the same officer and, therefore, the period spent by him in both these Sub-Divisions was to be taken up together and counted towards the days during which the workman had put in service in 12 preceding months' from the date of his termination of service whereas the Management examined MW-1 Vipin Sharma, SDO, who had stated that the workman was appointed in Sub-Division No. 8 on muster roll daily wage basis from January, 1993 to August, 1994 and he himself left the work thereafter. He further stated that from October, 1993 to December, 1993, the workman worked with some other Sub-Division, which does not fall in National Highway Division i.e. Sub-Division No. 8. The Sub-Division No. 6 Karnal, where the workman performed his duties from October, 1993 to December, 1993, was doing the work of construction of road and bridge. He has categorically stated that the administrative control of Sub-Division

No. 6 and Sub-Division No. 8 is under the different Executive Engineers and the nature of work also is different of two Sub-Divisions. He had further stated that the construction of National Highways and the maintenance work being performed by Division No. 8 is one which is assigned by the Ministry of Surface, Government of India. The workman voluntarily left the job in September, 1993 and joined the new Sub-Division No. 6 in October, 1993 where he continued to work up to December, 1993. It was, therefore, the specific stand of the petitioner-Management that the appointing authority of two Sub-Divisions were different XENs and further the said Sub-Divisions had different nature of job, which was being performed by them. It is not the case of the workman that his services were transferred from Division No. 8 to Division No. 6, in compliance of which, he had joined his duties in Sub- Division No. 6 from Sub-Division No. 8. That being so, the stand of the Management is fully justified and thus, the Award passed by the Labour Court cannot be sustained."

These findings of learned Single Judge could not be challenged by the appellant. Facts and law both are dead against the appellant.

(10) There being no error of fact or law in the findings recorded by the learned Single Judge, the appeal, being devoid of merit, is dismissed.

S. Gupta