SUPREME COURT OF INDIA

H.U.D.A.

Vs.

Jagmal Singh

C.A.No.5361 of 2005

(Dr.A.R.Lakshmanan and Lokeshwar Singh Panta JJ.)

13.07.2006

JUDGMENT

Dr.AR.LAKSHMANAN,J.

Heard Mr.Sanjay Jain, learned counsel for the appellant and Mr.D.P.Chaturvedi, learned counsel for the respondent. The above appeal is directed against the order passed by the Punjab and Haryana High Court in Civil Writ Petition No.5947 of 2003. The Writ Petition filed by the appellant herein was dismissed without assigning any reasons whatsoever.

The respondent herein was appointed by the appellant as sweeper on daily wages on 01.05.1992. According to the appellant, the respondent had left the service at his own which has been disputed by the learned counsel for the respondent. The respondent sent a demand notice after a delay of four and a half years through the Labour-cum-Conciliation Officer, Panipat to the appellant asking for reinstatement with continuous service and back wages. The appellant filed reply to the demand notice before the Labour- cum-Conciliation Officer, Panipat putting it clearly that the respondent had not completed 240 days service in any of the three years that he had worked there. The dispute was referred to the Industrial Tribunal-cum-Labour Court, Panipat. The Labour Court passed an award in favour of the respondent holding that the respondent was entitled to reinstatement to the service with continuity of service and full back wages from the date of demand notice, i.e., 11.11.1999. Aggrieved by the said order, the appellant invoked the jurisdiction of the High Court of Punjab and Haryana seeking setting aside of the order of the Industrial Tribunal and Labour Court. The High Court, as stated earlier, dismissed the Writ Petition.

We have perused the orders passed by the High Court and also of the Labour Court and the evidence led before the Labour Court by both the parties. Our attention has also been drawn to some documents filed in support of the appellant and the other relevant documents. The appellant had also produced before the Labour Court the statement marked as Annexure P-1. It is seen from the above statement that the respondent-workman had worked for 204 days (from March, 1994 to February, 1995) on daily wages. The Labour Court also considered the evidence of Rajesh Kumar, Clerk of the appellant that the respondent- workman has worked from 01.01.1994 to February, 1995 in their Division for 204 days. The Labour Court has further held that the records from 01.07.1994 to 31.07.1994 was not available and, therefore, the management has failed to produce the record for

the month of July, 1994 and if the working days of July, 1994 was counted then the workman has worked for 235 days and if the gazetted holidays and weekly rest were included then definitely the workman has worked for more than 240 days under the management.

We are unable to appreciate the approach made by the Labour Court in calculating the statutory period of 240 days in a year. In our opinion, both the Labour Court and the High Court have failed to appreciate the fact that the respondent has failed to complete the statutory period of 240 days in a year to entitle him for claiming any benefits whatsoever. As already noticed, evidence has been led to the said fact before the Labour Court but still the issue of attendance of the respondent has been decided in his favour. This apart, the respondent was appointed only as a daily wage earner and not as a permanent employee of the appellant and hence the respondent cannot claim any right to the post in question and that no right has accrued to him to claim any benefits from the appellant. This fact has been overlooked by the Labour Court and also by the High Court. The fact remains that the respondent has not worked for the statutory period of 240 days which has been clearly established by the appellant. It is settled law that the workman has to prove that he had worked for 240 days. In the instant case, the workman has not established that he has served the appellant for the statutory period of 240 days.

In the result, the order passed by the Labour Court and the non- speaking order passed by the High Court are liable to be set aside. We do so accordingly and allow the Civil Appeal filed by the appellant and set aside the order passed by the Labour Court and the High Court ordering reinstatement and back wages. No costs.

We also make it clear that the payment, if any, made to the respondent during the pendency of the appeal before this Court, shall not be recovered.