

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11639 of 1993

Date of Decision: 03.12.2015

Haryana Warehousing Corporation Ltd.

... Petitioner

Versus

Presiding Officer, Industrial Tribunal cum
Labour Court, Hissar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.K. Mutneja, Advocate and
Mr. B.S. Giri, Advocate,
for the petitioner.

None for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This Court has ordered the listing of four of the oldest matters pending in this Court on its regular Board to be taken up in the urgent list for final disposal.

2. Mr. Mutneja, learned counsel is present to address arguments.

3. No one has appeared on behalf of respondent No.2 nor pass over is sought. Respondent No.2 is proceeded ex parte.

4. Mr. Mutneja is correct in his submission that this matter is covered by the ratio of the decision of the Supreme Court in **M. Venugopal vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. And another**, (1994) 2 SCC 323 holding that the respondent-workman is not entitled to any relief since his services have

been terminated during the period of probation in terms of Regulation 7 (3) (b) (i) of the Staff Regulations of the Haryana Warehousing Corporation as his work during the period of probation has not been found satisfactory. The result whereof will be that termination of the service of the respondent-workman shall not be deemed to be “retrenchment” within the meaning of section 2 (oo) even if sub-section (bb) had not been introduced in the said section. Once section 2 (oo) is not attracted, there is no question of application of section 25-F of the Industrial Disputes Act, 1947 (“the Act”) on the basis of which termination of the service of the workman can be held to be invalid. The termination of the service of the respondent-workman during the period of probation is in terms of the order of appointment read with Regulation 7 (3) (b) (i) of the Staff Regulations which are the rules of service. This is the binding dicta in *M. Venugopal*. The ratio of the case is applicable when the office order dated May 05, 1982/May 13, 1982 is read with the office order dated May 15, 1985 dispensing with the services of the workman for the reason that he was not able to complete his probation to the satisfaction of the Corporation while he was working as Godown Attendant-cum-Watchman at State Warehouse, Rattia.

5. The three relevant clauses of the office order appointing the respondent-workman initially at State Warehouse, Sirsa-2 are Clauses 2, 5, 6 & 7. Clause 2 prescribes that appointee would be on probation for a period of one year. Clause 5 mandates that his services will be governed by the rules of the Corporation as amended from time to time. Clause 6 provides that post is temporary but likely to continue Contributory Provident Fund Scheme is applicable to the employees of the Corporation

after successful completion of the prescribed period of probation. Lastly, Clause 7 asks for consent from recruit that in case, the offer is acceptable it will be on the terms and conditions of the appointment in Clauses 2 to 6. Therefore, the appointment was accepted in terms of the office order.

6. Mr. Mutneja submits that though the period of probation fixed is one year but there is no deemed or automatic confirmation in the rules and regulations since the period of completion of prescribed period of probation is not mentioned in the office order but rests in the regulations which is three years. It is that regulation on which the management has acted which it had lawful authority to do in discharging the employee. Thus, there can be no doubt that the case falls under Regulations 7 (3) (b) (i) and disengagement does not amount to retrenchment in order to attract section 25-F of the Act. This is where the Labour Court, Hisar in its award dated April 20, 1993 committed a fundamental flaw of law in reinstating the claimant-workman to service with continuity and other consequential benefits. The back wages have been restricted w.e.f. July 20, 1989. There is an explanation for this date as pointed out by Mr. Mutneja that this was the second demand notice which led to the reference answered by the impugned award.

7. The dispute was raised for the first time with the Corporation on May 22, 1985 and this is another factor which should have been considered by the Labour Court to deny relief. All other considerations fall into insignificance and in the considered view of this Court, the impugned award cannot be sustained as there is an error apparent on the face of record which vitiates the proceedings leading up to the passing of the award. It

may not be inappropriate to say that the reference itself was bad for want of maintainability in the light of the law illustrated in *M. Venugopal*.

8. There is another reason why relief should be denied and that is with reference to the observations made by M. Hameedullah Beg, CJI in his separate opinion recorded in **Bangalore Water-Supply vs. R.Rajappa and others**, AIR 1978 SC 548 where the observations came that in the presence of statutory rules framed under Article 309 of the Constitution of India by necessary implication the provisions of the ID Act will not apply and stand excluded.

9. I find no reason why the principles underlying proviso to Article 309 of the Constitution of India should not apply to regulations framed by Corporation though which may not be governed by the provisions of Article 311 or 309 of the Constitution of India but the legal principle appears to be common and applicable.

10. For these reasons, there is substance in this petition. The petition is allowed and the impugned award dated April 20, 1993 is set aside. Since the respondent-workman has not been heard he would remain at liberty to apply for review of this order in case there are cogent reasons to do so justifying the prayer, in case brought.

11. A copy of this order be remitted by the office to respondent-workman at the address mentioned in the memo of parties/array of parties in the award.

(RAJIV NARAIN RAINA)
JUDGE

03.12.2015
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