

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 2992 of 2007(O&M)
Date of decision : August 6, 2015

The Director, Haryana State Lotteries Department

..... Petitioner

Versus

Ramesh Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Dr. Sushil Gautam, DAG., Haryana
for the petitioner.

Mr. Lalit Rishi, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
CM Nio. 9585 of 2015

The prayer in the application is to place on record

Annexures R-1/1 to R-1/6.

C.M.is allowed.

Annexures R-1/1 to R-1/6 taken on record.

CWP No. 2992 of 2007

The challenge in the present petition is to the award dated 11.7.2006 whereby the reference raised by the workman qua his alleged termination has been answered in his favour and he has been held entitled to reinstatement along with continuity of service as well as full back wages.

Dr. Sushil Gautam, DAG., Haryana submits that the

Labour Court has committed illegality and perversity in deciding the reference in favour of the workman as the department has categorically stated in the written statement that the department of Lottery is not an Industry and the workman was employed on daily wages w.e.f. 15.5.1995 subject to the availability of work by different sales officers as per requirement of particular scheme and worked upto 31.7.2000 that too intermittently. Thereafter, the workman left the job, therefore it was a case of abandonment and there was no necessity of issuing notice, much less payment of compensation.

He further submits that the question is that as to whether the Department of Lotteries is an Industry or not which had been held in favour of the workman in CWP No. 11533 of 2004 titled as **Anil Kumar Vs. State of Haryana decided on 25.4.2005.** However, the Hon'ble Supreme Court in SLP No. 20114 of 2005 had granted stay to the aforementioned order.

Learned counsel for the respondent submits that the objection viz-a-viz department of Lotteries being an Industry was not pressed by the Management despite issue No.2 was framed, which fact is evident from the findings rendered by the Labour Court which reads thus:-

“Onus to prove this issue was on the respondent but at the time of arguments the Ld.Authorised representative for the respondent neither pressed upon this issue nor he placed any cogent evidence on the record to prove this issue. Therefore, this issue is decided against the respondent and in favour of the petitioner-workman.”

He further submits that the aforementioned SLP No. 20114 of 2005 was converted into Civil Appeal No. 4736 of 2007 and the same has been dismissed . Thus, the judgment of this Court has not been merged with the order of Hon'ble the Supreme Court. He further submits that the Management did not resort to the provisions of Section 25-F of the Industrial Disputes Act, 1947 and services of the petitioner were terminated in blatant violation of the aforementioned provisions.

I have heard learned counsel for the parties and appraised the paper book.

No doubt that the Division Bench of this Court has held that Department of Lotteries is an Industry, there had already been a judgment rendered by learned Single Bench of this Court in **State of Punjab Vs. Parvesh Kumar 1994 (3) SCT 397.** In my view, the department of Lotteries is an Industry by taking into consideration the ratio decidendi culled out in **Bangalore Water Supply Vs. A. Rajappa, AIR (1978) SC 548** . Since the Civil appeal has been dismissed, it could not be an order in limine as finding rendered by Hon'ble the Supreme Court is to the extent that there could be infirmity in the impugned order though, the Hon'ble Supreme Court at many occasions has deliberated upon the issue that simpliciter or dismissal of the SLP would not attract doctrine of merger but the aforementioned fact has been referred to a larger Bench.

Be that as it may, the fact remains that there is already a judgment rendered by this Court, particularly when the same was not pressed before the Labour Court, the Management is

estopped to raise the plea in the present writ petition. It is a matter of record that the Department has not issued any show cause notice or charge sheet, had it been a case of absence, it had held enquiry by issuing notice at the last available address of the workman.

The Labour Court after pondering upon the documentary and oral evidence has come to a categoric finding that there is violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 and thus granted relief as noticed above.

There is no fault, much less illegality and perversity in the finding rendered by the Labour Court.

Accordingly the award is upheld and the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

August 6 , 2015
archana