

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.14554 of 2013

Date of decision: 8.12.2015

Laxmi Devi

... Petitioner

Versus

R.D.S. Public Girls College and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Narender Yadav, Advocate,
for the petitioner.

Mr.Aditya Yadav, Advocate, for
Mr.S.N.Yadav, Advocate,
for respondents No.1 to 3.

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

RAJIV NARAIN RAINA, J. (Oral)

The petitioner was appointed to service on August 2, 2002 to serve as a Peon in RDS Public Girls College, Rewari; the respondent management. She worked continuously up to February 28, 2009 when her services were terminated without furnishing any reason of complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The relieving order merely states that her services “are no more required”.

Aggrieved by the termination order, the petitioner raised an industrial dispute with the management by serving a demand notice on it which led to conciliation proceedings. The Conciliation Officer was not

successful in attempting a settlement or bringing about reparation between the parties. The conciliation officer filed his failure report to the Labour Department, Haryana. The appropriate Government made the present reference of the dispute to the Presiding Officer, Labour Court-I, Gurgaon in reference No.312 of 2010.

On notice, the management appeared before the Labour Court and entered defence pleading that as per notified rules known as the Haryana Affiliated Colleges (Securities of Services) Rules, 2006, the petitioner was over age at the time of initial appointment which makes her appointment contrary to law. Rule 4 prescribes that no person shall be appointed to service by direct recruitment who is more than 35 years of age on the last date of submission of the application to the Managing Committee.

The Labour Court has been swayed by this argument and held that the workman was overage at the time of initial appointment in 2002 and, therefore, her appointment was not legal. Moreover, the court held she was never appointed against a regular post but was engaged on purely temporary basis for “some period” on payment of consolidated salary. She was discharged simpliciter vide relieving order Ex.R6. The Labour Court has answered the reference against the workman and declined relief to Laxmi Devi altogether.

Having jumped to the conclusion that the workman had no case on merits, the Labour Court failed to examine the matter from the angle of breach of provisions of Section 25-F of the Industrial Disputes Act, 1947 and its resultant effect on the termination. Even the formality of returning

proper finding on completion of 240 days of service within the definition of Section 25-B of the ID Act read with Section 25-F of the I.D was not embarked upon or recorded while it should have been the effort of the court to render a comprehensive award dealing with all the aspects. Jurisdictional facts have not been entered upon, noticed or dealt with whatsoever. These twin jurisdictional facts are ex facie present on the face of the record to maintain the reference and claim for relief of reinstatement and continuity of service with back wages. The defence of the management is that the provisions of Section 25-F of the ID Act was not required to be complied with nor was a finding on issue of 240 days a necessary accompaniment in the award.

The only argument raised by the management at the hearing today is that the relief is inadmissible since the College was affiliated to Maharishi Dayanand University, Rohtak and, therefore, the Industrial Disputes Act was not applicable to the educational institution. This argument deserves to be noticed and rejected. The college qualifies as industry within the meaning of section 2 (j) of the Act. It matters little whether the college is affiliated to one or the other University. This settled position is subject to reference made by the Supreme Court in **State of U.P. v. Jai Bir Singh**; (2005) 5 SCC 1 to the larger Bench for reconsideration of the decision of the Supreme Court in **Bangalore Water Supply and Sewerage Board v. A. Rajappa and others**; AIR 1978 SC 548. Till then the old position continues.

Learned counsel for the petitioner relies on a Single Bench decision of this Court in **Hindu Kanya Mahavidalaya, Dhariwal**

[Gurdaspur] v. The Presiding Officer, Labour Court, Gurdaspur and another; 2009 (7) SLR 444 : 2009 (4) SCT 192 where the learned single judge of this Court dealt with the provisions of the Punjab Affiliated Colleges (Security of Service) Amendment Act, 1983 in its jurial relationship with ID Act and particularly Section 2(j) and 2(s) thereof. The Court re-affirmed the position that an educational institution is an industry within the definition section 2 (j) of ID Act. An employee of an educational institution cannot be deprived of her remedy under the special law provided by the ID Act.

For the reasons recorded above, the award passed by the Presiding Officer, Labour Court-I, Gurgaon is not sustainable. It has to be set aside. The writ petition is allowed. The petitioner is reinstated to service with continuity but her back wages will remain restricted to 50% of the arrears in order to serve the ends of justice and to balance out the interest of both sides keeping in view that the management is an educational institution.

(RAJIV NARAIN RAINA)
JUDGE

December 8, 2015

Paritosh Kumar