

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

**CWP No.24237 of 2011 (O&M)
Date of decision: 04.05.2015**

Gurnam Singh ... Petitioner
Vs.

Presiding Officer and another ... Respondents

CWP No.24424 of 2011 (O&M)

Rajbir Singh ... Petitioner
Vs.

Presiding Officer and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Amarjit Singh, Advocate
for the petitioner.

Mr. Sandeep Khunger, Advocate
for respondent No.2.

AMIT RAWAL J.

This order of mine shall dispose of two writ petitions bearing Nos.24237 and 24424 of 2011, as common questions of law and facts are involved.

For the sake of convenience, the facts are being taken from CWP No.24237 of 2011.

The workmen have approached this Court by challenging the Award dated 10.10.2011 (Annexure P-8), whereby, the reference has been decided against the workmen.

Mr. Amarjit Singh, learned counsel appearing on behalf of the petitioners submits that the stand of the Management is that the petitioners were employed on daily wages and they have not been issued any appointment letter, which amounts to unfair labour practice. He further submitted that the workmen had been working on monthly salary of ₹ 1683/- per month w.e.f.1994 to 1.4.1997 and the services of the petitioners were terminated without issuing any notice/charge sheet/enquiry or payment of retrenchment of compensation, therefore, the Labour Court has gravely erred by rejecting the reference that the workmen are entitled to be reinstated into service along with continuity of service and back wages.

Mr. Sandeep Khunger, learned counsel appearing on behalf of respondent No.2 submits that the workmen were appointed only on contract and daily wages vide resolution Ex.M2 and thereafter, the appointment letters were issued on expiry of the contract. Services of the petitioners were no longer required and therefore, the petitioners cannot be permitted to allege the violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act'), as the termination of the services of the workmen was as a result of non-renewal of the contract of the employment, in essence, the services of the workmen were

terminated as per the provisions of Section 2(oo)(bb) of the I.D.Act.

In rebuttal, Mr. Amarjit Singh, learned counsel appearing on behalf of the petitioner sought reliance upon Award dated 18.01.2002 (Annexure P-7) rendered in favour of Darshana Kumari whereby, identically situated workman has been ordered to be reinstated along with 50% back wages.

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

It has come on record that both the workmen have not been issued any appointment letters as they were appointed on daily wages and they were only taken on muster roll. Through the testimony of WW1-Dilbagh Singh, Clerk, Nagar Panchayat, who has been summoned by the workmen, it has come on record that the Management used to pass resolution for employing the person on muster roll basis and sought approval of the competent authority. Such kind of work was to be done on the basis of sanction and due to non-grant of sanction, the services of the workmen were terminated. Even the witness also feigned ignorance qua issuance of appointment letter but admitted that the salary was being paid after they signed on muster roll. He further admitted that the work was subject to the condition of approval of budget by the Deputy Director, Local Body Government by Nagar Panchayat. It is a matter of record that both the workmen were discharging the duties as Clerks and both were recruited without issuing any advertisement in newspaper

nor any application has been invited from general public and thus, appointment was at the level of the Management. Thus, both the workmen were employed keeping in view the exigency of the work. In compliance of the order of this Court, the Government issued instructions dated 21.3.1997, Ex.R-4, whereby, the directions were issued not to fill up the ad hoc vacancy, rather to fill up the vacancy by following the procedure.

It is a matter of record that Local Body Government allotted funds for the year 1997-98 which came to an end on 31.03.1997 and accordingly, the services of the workmen were stopped w.e.f.1.4.1997. Thus, discontinuation of the services of the workmen was in compliance of the Government directions inasmuch as directions of this Court. The applicability and distinction between the provisions of Section 2 (oo)(bb) and Section 25F of the I.D.Act is no longer res integra.

It is settled law that on termination of the workman on account of non-renewal of the contract between the employer and the workman on expiry of such contract, the provisions of Section 2 (oo)(bb) of the I.D.Act are attracted. No evidence has been led. There is no existence of any work which the petitioners were performing. The petitioners cannot be permitted to allege the violation of Section 25F of the I.D.Act. Had any evidence been led regarding the existence of the work at their instance, the Management could not have terminated their services. The same

view was taken by the Labour Court while rejecting the reference of the workmen.

In view of what has been observed above, there is no merit in the writ petition and the Award dated 10.10.2011, is upheld and the writ petitions are dismissed.

(AMIT RAWAL)
JUDGE

May 04, 2015
savita