

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: August 04, 2015

1. CWP No.1611 of 2015

Principal Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu,
District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

2. CWP No.1735 of 2015

Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

3. CWP No.1736 of 2015

Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

4. CWP No.1737 of 2015

Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

5. CWP No.1738 of 2015

Civil Writ Petition No.1611 of 2015

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Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

6. CWP No.1739 of 2015

Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

7. CWP No.1740 of 2015

Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

8. CWP No.1741 of 2015

Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

9. CWP No.1742 of 2015

Rani Jhansi Laxmi Bai, Govt.Polytechnic College, Loharu, District Bhiwani

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Hitesh Pandit, Addl.A.G.Haryana,
for the petitioner in all the cases.

Mr.Sandeep Thakan, Advocate,
for respondent No.2 in all the cases.

AMIT RAWAL, J. (Oral)

By this common order, I intend to dispose of Civil Writ Petition Nos.1611, 1735, 1736, 1737, 1738, 1739, 1740, 1741 and 1742 of 2015 as the common question of law and facts involved in all the cases is the same. The facts are being taken from CWP No.1611 of 2015.

The challenge in the writ petitions is to the award dated 21.3.2014 (Annexure P-8), whereby the reference raised by the workmen vis-a-vis their termination has been answered in their favour and they have been held entitled to reinstatement with all consequential benefits, but without back wages for the reason that they have not worked for the intervening period.

Mr.Hitesh Pandit, Additional Advocate General, Haryana appearing on behalf of the State submits that the Labour Court has committed an illegality and perversity in directing the petitioner-Management to take the workmen into service as they had rendered only two years of service. He further submits that the Labour Court has not appreciated the fact that the workmen were appointed on daily wages and in

view of the ratio decidendi culled out by the Hon'ble Supreme Court in B.S.N.L. Versus Bhurumal, 2014(7) SCC 177, they are not entitled to reinstatement. At the best, the workmen could be held entitled to compensation as they have failed to prove that there was availability of work and posts.

Mr.Sandeep Thakan, Advocate appearing on behalf of the workmen submits that the Management has resorted to unfair labour practice. There is a clear cut violation of provisions of Section 25-H of the Industrial Disputes Act, 1947 inasmuch as that MW-1 Principal, namely, Pankaj Bhalla in cross-examination admitted that they are recruiting new workers, including Peons through outsourcing agency and, therefore, the Labour Court, after noticing the aforementioned cross-examination, has granted the relief of reinstatement and, therefore, there is no, violation and illegality, much less, perversity in the award of the Labour Court and the same is liable to be sustained.

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

The shorn of the facts reproduced above. It would be apt to refer the relevant portion of the award of the Labour Court, wherein the cross-examination of MW-1 has been noticed. The same is extracted herein below:-

“The petitioner has also alleged violation of provisions contained under Section 25-G and 25-H of the Act submitting that while terminating his services employee junior to him were retained and thereafter new recruitment to the post was made without affording him an opportunity of re-employment, but the

petitioner did not lead any evidence to prove the violation of provisions contained under Section 25-G of the Act as he did not disclose the name of any person who was junior to him and was retained at the time of terminating his services. However, to prove the violation of provisions contained under Section 25-h of the Act he relied upon the statement of Sh.Pankaj Bhalla, Principal, Govt.Poly. College, Loharu, Bhiwani examined by the respondent as MW1 who in his cross examination stated that at present, the respondent is employing new workers including Peons through outsourcing agency.

Section 25-H of the Act says that where workmen are retrenched and the employer proposes to take into his employment any persons, he shall in such manner as may be prescribed give an opportunity to the retrenched workman who are citizen of India to offer them for re-employment and such retrenched workman who offer themselves for re-employment shall have preference over other persons. To attract the provisions of the said Section it is not necessary that the workman must have completed one year of service as is required to claim the benefit of provisions contained under Section 25F of the Act. Even workman having one day employment can seek the benefit of said provision. Meaning thereby, to employ any other person in place of the petitioner on temporary basis by any means whatsoever i.e. Whether by direct employment or through outsourcing agency, the petitioner was required to be given an opportunity of re-employment as provided under Section 25-H of the Act. Admittedly while employing another person in place of petitioner through outsourcing agency no opportunity was afforded to the petitioner for re-employment. It was in violation of provisions contained under Section 25-H of the Act. Therefore, the violation of provisions contained under said section is proved.”

Once the Labour Court has noticed the fact that the employer has violated the provisions of Section 25-F, the ratio decidendi culled out in B.S.N.L's case (supra) would rather be applicable for the reason that there are no witty reasons for adopting the course of grant of compensation only and workmen are entitled to reinstatement and rightly so, the Labour Court ordered for reinstatement. There is no illegality and perversity in the award of the Labour Court,

Since the workmen were rendering the services of Peon/Sweeper/Mali and Chowkidar and the Management resorted to employ new workers, including Peons through outsourcing agency, in my view, such an act of the Management is in blatant violation of provisions of Section 25-H of the Act. The Management is liable to comply with the aforementioned provisions. Having not done so, such an act amounts to unfair labour practice. No fault can be found with the finding rendered by the Labour Court. The finding is in consonance with the dictum laid down in B.S.N.L.'s case (supra).

Accordingly, the award of the Labour Court is upheld. Resultantly, the writ petitions are dismissed. The Management is directed to reinstate the workmen with continuity of service within a period of three months from the date of receipt of certified copy of this order.

August 04, 2015
ramesh

(AMIT RAWAL)
JUDGE