

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.10323 of 2015 in/and
CWP No.16448 of 2015
Date of Decision: 24.08.2015**

Gram Panchayat Parta, through
its Sarpanch

... Petitioner

Versus

Presiding Officer, Labour Court-Cum-
Industrial Tribunal, Hisar
and others

... Respondents

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

Present: Mr. Amit Kumar Jain, Advocate,
for the applicant-petitioner.

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

RAJIV NARAIN RAINA, J.

CM No.10323 of 2015

For the reasons mentioned in the application, the same is allowed and the main case is taken on Board today itself for final disposal.

Main case

1. Heard. The respondent 3-worker was appointed as a part time worker for cooking food for children for the mid-day meal scheme launched by the Central and State Government in tandem in government schools in Haryana. When her services were dispensed with she raised an industrial dispute by serving a demand notice. Conciliation failed and the dispute was referred to the labour court for adjudication. The reference has been allowed

and reinstatement has been ordered by setting aside the termination order.

2. A finding of fact has been returned that she was in continuous service on part time basis till December 01, 2012. She then drew a salary of Rs.1250/- per month. The termination has been brought about without complying with the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”) inasmuch as neither notice nor wages in lieu of notice nor retrenchment compensation was paid to her when her services were terminated. The respondent-worker also pleaded before the Labour Court that provisions of section 25-G of the Act were breached and the persons engaged after her who were junior to her were retained in service while new faces were engaged to serve in the scheme. On these twin principles as well she sought re-employment. She named a person by the name of Laxmi who was appointed part time after she was shown the door. However, she was unable to produce evidence of violation of section 25-G and the issue was not pressed by her before the labour court and was thus given up.

3. The defence of the management before the Labour Court was that respondent was not a “workman” covered within the meaning of section 2(s) of the Act since she was employed only on part time basis. The Labour Court rightly rejected the argument since part time workers are entitled to protections under the Act. In **New India Assurance Co. Ltd. v. A. Sankaralingam**, (2008) 10 SCC 698 has clarified that not only full time workers but even those working part time are covered within the purview of the Act. Accordingly, Section 2 (s) of the Act should be read as, every person employed in an establishment for hire or reward to do any manual,

clerical, skilled, unskilled, technical, operational or supervisory work including part time employees, will be workmen under the Act. The principle was proliferated by the Supreme Court in **Devinder Singh vs. Municipal Council, Sanaur** (2011) 6 SCC 584. Even **A. Sankaralingam** was a reaffirmation of past judicial precedents of various High Courts on the point including this Court. There are by now a plethora of precedents on the point and the issue is past debate.

4. So far as breach of mandatory provisions of sections 25-F & 25-H are concerned there is a finding of fact recorded by the Labour Court that work was available when her services were retrenched and she was replaced by Laxmi to perform the same functions which the respondent 3 was performing before termination. The Labour Court has gone to the extent of saying that the termination was mala fide and was resorted to for oblique purposes. The case, therefore, falls squarely in the teeth of sections 25-F and 25-H of the Act for both of which reasons the worker has succeeded in the reference.

5. This writ petition has been filed by respondent 2 Gram Panchayat, Parta. The contention raised is that the Gram Panchayat, Parta through its Sarpanch is only a member of the School Management Committee of the Government Girls Primary School, Parta where the respondent worker was employed to serve on part time basis and therefore there has been a misjoinder of parties as it cannot be held that the petitioner gram panchayat is the employer. Therefore, the award deserves to be set aside qua the petitioner. Besides, there is no clarity in the award as to the implementing authority as it directs the “respondents” to implement the

award.

6. I have no reason to bifurcate liabilities under the award for the reason that the mid-day meal scheme is operated through the many Gram Panchayats in Haryana and they are equally responsible for running the scheme from funds routed through their agency. The respondent worker would thus appear to draw her rights on reinstatement from of the both the respondents jointly and severally. When the gram panchayat admittedly is represented in the School Management Committee it partakes character of management and co-employer and becomes a integral part of the management and therefore an equal partner in running the affairs of the scheme in government schools falling within its jurisdiction with respect to persons engaged to promote the scheme. In any event, the matter lies between the school and the gram panchayat with which the worker has little concern till the scheme lasts. For purposes of relief the respondent worker is concerned only with her employment or non-employment and the compliances of labour law are or who is accountable is not her concern. The liability therefore remains joint and several if the award is affirmed. There is no infirmity, perversity or irrationality in the work of the court *a quo*.

7. For the foregoing reasons, I find no cogent ground warranting interference in the impugned award order dated June 03, 2015 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar.

8. The petition stands dismissed.

**(RAJIV NARAIN RAINA)
JUDGE**

24.08.2015
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