

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

Civil Writ Petition No.3347 of 2013

Date of decision: 22.01.2015

Santosh Rani

... Petitioner

Versus

The Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.J.S.Bedi, Advocate,
for the petitioner.

Mr.R.S.Cheema, Advocate,
for respondent No.2.

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

RAJIV NARAIN RAINA, J.

The petitioner served as a part-time *ad hoc* Safai Karamchari with Thakur Devi Takanram DAV Institute of Physiotherapy and Rehabilitation, Yamunanagar initially on a consolidated salary of ₹ 749/- per month from the year 2001 till 10th July, 2005 to work in the girls hostel earning monthly wages at ₹ 1400/- per month till she last served. Her appointment was made on 89 days basis. During the period of service, she was given 19 extensions of 89 days each. The management asserted that the petitioner remained absent from duty from 10th July, 2005 to 19th July, 2005. She gave an undertaking to retrieve employment that in case she goes on leave in future, she may be relieved from duty. This obviously was under threat of termination and by way of a reprieve. On the face of the request letter, in which she expressed regret on proceeding on leave without notice,

the management recorded that the same be filed. In the hand written note in English addressed to the Clerk, it was recorded, "the candidate is warned about his behaviour & can be relieved from duties without notice if repeated". The warning was dated 20th July, 2005. Notwithstanding, the management passed an order No.4932 dated 22nd August, 2005 relieving her from duty on completion of the last run of 89 days of *ad hoc* service.

2. Aggrieved by the relieving order which meant 'retrenchment', the petitioner raised an industrial dispute and served a demand notice on the management claiming reinstatement. On their refusal to do so, conciliation proceedings were initiated but failed to settle the dispute and then the petitioner sought reference to the area labour court to adjudicate the dispute. The appropriate Government made reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 to the Presiding Officer, Labour Court, Ambala.

3. The Labour Court adjudicated the dispute and in its award dated 14th October, 2010 has rejected the reference and the workman was held not entitled to any relief whatsoever as the provisions of the Industrial Disputes Act are not applicable or attracted in the case. The Labour Court was of the view that the claim statement submitted by the worker wilfully and intentionally raised false and frivolous pleas to abuse the process of law. The dispute has been answered in favour of the management. The Labour Court has held that the petitioner was engaged on daily wage basis and not on regular basis. Neither any advertisement was published in the newspaper nor was any interview conducted when the appointment was made. The Court *a quo* applied the ruling in **Jaipur Development**

Authority v. Ramsahai and another; [2006] 2 SCC 684 and held that the

petitioner was not entitled to be appointed on a public post which was required to be filled by following the principles of articles 14 and 16 of the Constitution of India. Since, admittedly, no such procedure was adopted, therefore, the question of termination without notice and without enquiry or otherwise does not arise, especially when the appointment orders as indicated in the letters Ex.M3 to 16, Ex.M18, Ex.M20 to Ex.M22 and Ex.M25 were admitted and accepted by the workman. This shows that her job is purely temporary and she can be terminated at any time without notice and without assigning any reason. The Labour Court felt that on this factor alone the workman was estopped from filing the present claim statement by her own act and conduct.

4. In coming to these facile conclusions, the Labour Court failed to recognize the rudimentary principles of industrial law that the relieving order would acquire the character of “retrenchment” within the meaning of Section 2(oo) of the Act where retrenchment has been defined widely as termination “for any reason whatsoever”. This principle was laid down by the Supreme Court several decades ago in **State Bank of India v. Sh. N.Sundara Money**; AIR 1976 1111 and **Santosh Gupta v. State Bank of Patiala**, 1980 AIR 1219 and has been followed since. The relieving order is no more than retrenchment within the meaning of Section 25-F of the Act and, therefore, due process of the provisions of Section 25-F (a) and (b) had to be complied with which was dismally breached. The Labour Court has not examined this issue, whatsoever. Therefore, relief could not be denied to use the words of the court *a quo* “whatsoever”. This is where one of the many errors was committed.

5. The Labour Court award is also not sustainable for another

reason. The principles of article 16 do not reach private managements and posts on their staff strength do not constitute public posts or have reference to article 311 and article 16 of the Constitution. The private bodies and private institutions such as the DAV educational institution as here function through societies and are not required by law to satisfy mandates of the equal opportunity clause in Part III of the Constitution. The institute is neither functionally nor administratively dominated by or under the control of the State Government. It may qualify for minority status under articles 29 and 30 on the Constitution. The advertised posts in the respondent institute are also not amenable to the mandates of The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 not falling in the public sector. The successive appointments given to the petitioner in non-teaching staff was under *ad hoc* basis to serve part-time as was the condition stipulated in the first appointment letter but that condition of part-time work was not recited in the second appointment order dated 23rd May, 2001. In the absence of all exhibited letters for 89 days each placed on the writ file this Court assumes that the condition of part-time was not imposed thereafter nor was the word, “temporary” used in any of the further engagement orders which spoke only of *ad hoc* appointment. This *ad hoc* arrangement continued to run 19 times till the relieving order was passed in August, 2005. Therefore, reference to articles 14 and 16 of the Constitution in a labour matter involving a private institution is not a correct view either of law or of fact. This is the second grave error committed by the Labour court to decline relief.

6. Furthermore, the management had contended before the Labour

Court that the case falls under sub-section (bb) of Section 2(oo) of the Act which is in the nature of an exception to retrenchment. Therefore, compliance of section 25-F of the Act was not required is an incorrect submission which did not deserve consideration. As I read the two appointment letters placed on record by the management as R-1 and R-2, I do not see any stipulation in those letters that the services would stand automatically terminated by operation of the terms and conditions of appointment. The Management had issued 19 successive letters on 89 days basis which is sufficient indication that there was no stipulation in the contract of employment as contained in the appointment letter/s as required by section 2(oo) (bb) of the Act that the appointments would end with efflux of time. Such successive appointments may lead to an inference of unfair trade practice in terms of entry 10 of the 5th schedule to the Act. On this score also, the impugned award cannot be sustained in the eyes of law. It is another matter that the argument raised by the management taking the help of section 2(oo)(bb) was noticed as a contention but did not find its way in a finding recorded in the impugned award. Thus, the award cannot be said to be based on the exception clause (oo) in Section 2(oo) and in the absence of such a finding, the net result is that the relieving order amounts to retrenchment and therefore notice, wages in lieu of notice and reasons for termination had to be recorded as a condition precedent to retrenchment and without following the mandatory procedure the retrenchment is neither legal nor valid. The impugned award has none of this to be supported in judicial review under articles 226 and 227 of the Constitution of India. The condition of employment for 240 days in order to mature into the rights of

the petitioner to industrial safeguards provided in the Act was not only not disputed but it was an admitted fact as recorded in paragraph 10 of the award. Therefore, the jurisdictional facts to maintain the reference were amply present on the lower court file. This is the third misunderstanding which has crept into the impugned award.

7. The Labour Court records that the workman's engagement from time to time by the management was as per the requirement of work of 89 days each against separate sanction. The sanctioning of posts is a public law duty of the State and authorities amenable to writ jurisdiction to review actions of bodies qualifying under articles 12 and 226 of the Constitution which does not reach private employment in a private body where employment of 'workman' is in question amenable to jurisdiction of industrial tribunal and labour courts. The respondent-management does not qualify as State within the meaning of article 12 and at best may be accountable in its public duties performed on the right duty nexus to qualify as "other authorities" within the meaning of article 226 of the Constitution for purposes other than employment which remains personal in nature. If the respondent-Management is in receipt of grant-in-aid from Government, a factual position which has not been disclosed in this petition, then it was not argued that the petitioner was appointed on *ad hoc* basis against a sanctioned post and supported by grant-in-aid. A perusal of the appointment order reveals that the petitioner was appointed on part-time *ad hoc* basis on the non-teaching staff under the designation, "P.T. Hostel Safai Sewak". It is not explained what PT stands for in the girls hostel. If it is possibly, Parent-Teacher, then the source of wages could be from parent-teacher

funds. If that is so, where would the question be of articles 14 and 16 of the Constitution being brought in the present scheme of things in this case. Therefore, it is not the petitioner who has raised false and frivolous pleas or has abused the process of law but the same can be said with equal vigour of the management to rake up frivolous pleas in their defence before the Labour Court.

8. I have read the written statement filed by the management before the Labour Court which has been placed as Annexure R-9 to the written statement of the respondents filed before this Court and do not find from there a case set up under section 2(oo) (bb) of the Act and it was, therefore, impermissible to the management to address an argument on the said provision without pleadings. What is even more alarming on the perusal of the written statement filed before the Labour Court and before this Court is that both the motive and foundation of the relieving order is based on unsatisfactory work and for remaining absent from duty on “several” occasions with warnings issued and calling upon the petitioner to improve her conduct. When such a suggestion is made, the inference is that another chapter is opened by the management which could be closed only upon a charge laid in an inquiry and opportunity given to the workman to defend her absence by sustainable reasons, failing which, to suffer punishment. But these pleas were not taken by the management. The relieving order at R-9 is simpliciter and does not allege misconduct and, therefore, I would not make much of this argument since no stigma was attached in the relieving order but when defence is taken in the written statement of misconduct, then the complexion of the case may change on

principles of motive and foundation of the order unnecessarily diverting the mind of the Court. To this end, I have perused the writ papers and the two letters written by the workman and the response of the management. From R-5, I find that the working hours were reduced from 4 hours to 3 hours from 2nd May, 2005 while, at the same time, imputing her work as 'inefficient'. If she was inefficient, then she was made to work for 4 hours for many years. The warning issued that if absence is repeated and such behaviour continues, it may lead to issue of relieving order from the institution was a threat and casting shadows before they come. The letter is dated 30th April, 2005. The absence was for a period of just 3 days on account of the petitioner's daughter not being well and she had to stay hospital to look after her. This was not an unbelievable story. Then, she had to take leave from 10th April, 2005 to 11th April, 2005 as her husband was not well and she had to stay home to look after him. It was on account of this that she could not reach the work for two days. This was also not an unbelievable story to be discredited as false and frivolous. The total period of 4 days in 2005 has been shown as a continuity of misconduct. The period prior to 10th April, 2005 is not documented except a stray incident in 2004 and I would assume that nothing else was remiss in the petitioner's 'behaviour' or her conduct otherwise it would have been highlighted in bold. If there was absence from duty, the period was sanctioned *ex post facto* and therefore condoned.

9. Mr.Cheema appearing for the Management submits that whether we take retrenchment from 10th April, 2005 or from the date when the relieving order was issued on 22nd August, 2005 was passed, the

reference was made belatedly on 10th August, 2007 and for this reason interference is not called for in the petition. Moreover, the impugned award is dated 14th October, 2010 and the petitioner has approached this Court after much delay on 13th February, 2013 after about 2 years and 4 months and even if this Court contemplates that the award should be set aside and the relief granted, even then, this period of delay should not be counted towards any monetary relief the Court might consider giving to the workman. There is a substance in this argument of Mr.Cheema that the management should not be made to pay for delay in approaching the Court if monetary benefit has to be granted. There is nothing on the record of the writ file which may indicate the date when the demand notice was served by the workman on the management and the period prior to raising the dispute through a demand for justice should also not be counted for purposes of monetary benefits or back wages in case awarded.

10. For variety of reasons recorded above, it is not possible to sustain the impugned award for any of the three faults pointed out. The petition is allowed and the impugned award is set aside. The petitioner is held entitled to reinstatement. However, arrears of back wages would stand restricted for the period from the demand notice till the date of the award and then from the date of the award to the date of filing of this petition which would also not be granted to the workman as it will be unfair on the management. The arrears of back wages are restricted to the periods specified above. Parties will bear their own cost.

(RAJIV NARAIN RAINA)
JUDGE

January 22, 2015