

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

CWP No.4050 of 2015 (O&M)

Date of decision: 06.08.2015

Punjab School Education Board, Mohali and others

... Petitioners

Vs.

The Presiding Officer, Industrial Tribunal, Patiala 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. S.S.Behl, Advocate, for the petitioners.

Mr. Kapil Kakkar, Advocate, for respondent No.2.

AMIT RAWAL J. (Oral)

Challenge in the present writ petition is to the impugned award dated 20.08.2014, whereby, the reference raised by respondent No.2-workman has been answered in her favour and she has been held entitled to be reinstated with continuity of service w.e.f. 01.07.1998 but without back wages till 29.12.2003, when she was again re-employed by the Management on 30.12.2003.

Mr. S.S.Behl, learned counsel appearing on behalf of the petitioners-Management has raised multi-fold arguments which are summarized herein below:-

- i) The demand notice vis-a-vis termination in the year

1998 was raised in the year 2008, therefore, the claim is highly belated.

ii) The Labour Court has committed illegality and perversity in not appreciating the aforementioned facts, much less, in granting the relief as sought for.

iii) The workman had already filed a writ petition qua her alleged termination dated 29.05.2009 vide CWP No.9066 of 2009 which stood admitted and there is an interim order vis-a-vis her alleged termination.

iv) There is jurisdiction barred by virtue of Section 23 of the Punjab School Education Board, Act 1969.

v) The workman was appointed on contract basis. On expiry of contract, her services were dispensed with, as and when exigency of the work arose, her services were availed, therefore, the order of the Labour Court in ordering the reinstatement with continuity of service is erroneous, much less, fallacious.

Mr. Kapil Kakkar, learned counsel appearing on behalf of respondent No.2-workman has raised the following submissions in support of the written statement, as well as, defence:-

i) No plea of delay, at any point of time has been raised. Neither any reply before the Labour Court was filed, much less, no issue was pressed.

iii) There is a categorical averment in the claim petition

vis-a-vis termination in violation of Sections 25-F and G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act'), which is not specifically denied, rather denial is vague.

iii) The employment of the workman was not contractual and her termination from time to time i.e., at first instance, she was appointed on 22.09.1993 as Clerk on adhoc basis. She worked upto 30.01.1995 as Clerk and her services were again engaged on 09.02.1995 to 30.06.1998 on contract basis, therefore, termination of her services amounted to unfair labour practice, with a motive to deny the regularization. He also submits that Award of the labour Court is legal, fair and justified.

I have gone through the record, i.e., claim statement, it is borne out that plea of the limitation/raising of demand notice, as late as, in the year 2008, had not been taken into consideration by the Labour Court, nor any issue of limitation has been framed. The provisions of Article 137 do not apply to the matters pertaining to the Industrial Disputes Act. At the best, the workman can be granted back wages from the date, she has raised demand notice. The workman has referred to numerous paragraphs that the petitioner-Management had indulged into the unfair labour practice by giving new appointments after termination of the services of the workman from time to time and the said replies have not been denied. For the

sake of brevity, paragraph Nos. 8, 9, 14,15 and 17 of the demand notice raised are reproduced herein below:-

“8. That new appointments have been made by the respondent after the termination of the services of the workman.

9. That juniors to the workman were retained by the respondent at the time of termination of the services of the workman.

14. That the Clerks those have joined with the respondent/management along with the workman has been made regular by the respondent/management, hence the workman has been discriminated by the respondent/management.

15. That juniors to the workman are getting wages in the pay scale applicable to clerks but the workman is being paid only ₹2000/- per month, hence the respondent-management has committed unfair labour practice by paying ₹2000/- per month to the workman instead of paying her pay scale applicable to her category.

17. That in place of absorbing the workman in the regular pay scale as regular employee the respondent/management by committing unfair labour practice putting the workman on roll on 30.12.2003 on

consolidated salary of ₹ 2000/- per month.”

Paragraph Nos. 8, 9, 14, 15 and 17, of the reply are reproduced herein below:-

“8. In the contents of the para No.8, it is submitted that the posts were filled according to the procedure laid down and as per direction of the Hon'ble Punjab & Haryana High Court, Chandigarh as explained in the foregoing paras.

9. The contents of the para No.9 are wrong hence denied.

14. The contents of the para No.14 are wrong hence denied. No discrimination was done with claimant by making the regular appointments. The posts were filled according to the procedure laid down as per the regulations of the Board and as per Notification dated 23.01.2001 Mutatis Mutandi in its meeting held on 13.07.2004.

15. The contents of the para No.15 are wrong hence denied. The services of the claimant were engaged on contract basis in a consolidated salary of Rs.2000/- per month to meet the exigency of additional work load. No unfair practice was done with the claimant as explained in the foregoing paras.

17. In the contents of the para No.17, it is submitted

that no unfair practice was done by putting the claimant on roll on 30.12.2003 on consolidated salary of ₹2000/- per month as explained in the foregoing paras.”

On going through the pleadings of the parties before the Labour Court, it is found that the Management had not denied the factum of relationship of employer and employee. In my view, thus, there is a clear cut violation of Section 25-H of the I.D.Act and even services of the certain persons have been retained and they have been regularized and this fact is evident from the perusal of the Annexure R-1, i.e., order dated 12.09.2014. The aforesaid order reads thus:-

“Order Chairman, Punjab School Education Board

As per the decision taken under Item No.8, in the meeting of the Punjab School Education Board held on 12.09.2014, in the light of Punjab Govt. Notification dated 23.01.2001, as per the awards given by the labour Court from time to time granting continuity to the daily wagers assuming them to be in service on dated 23.01.2001 on completion of 3 years in service, the services of various categories of following daily wagers are hereby regularized from now onwards subject to the following conditions in the initial grade of the concerned posts:

Category Helper (Grade 10300-34800+3200 Grade Pay +400 S.P.)

<i>Sr. No.</i>	<i>Name/Father name</i>
1.	<i>Balwinder Singh/Jawala Singh</i>
2.	<i>Maninder Singh/Angrej Singh</i>
22.	<i>Amrit Lal/Ram Anand</i>
23.	<i>Anju Bala/Joginder Pal</i>
41.	<i>Harpreet Kaur/Mehanga Singh</i>

*SAS Nagar, 12.09.2014 Secretary,
Punjab School Education Board.*

Endst. No.PSEB-2EB-Establishment-2014/2143

Dated Mohali, 15.09.2014”

On perusal of the order, as well as pleadings, it leaves no manner of doubt that the Management has indulged into unfair labour practice in terminating the services of the workman. The Labour Court while taking into consideration the documentary evidence, i.e., Ex.W6 to Ex.W28, rendered the finding that the Management had employed various persons after termination of the workman. Thus, there is clear cut violation of provisions of Section 25-H of the I.D.Act. No fault can be found with the finding of the Labour Court, which is based on appreciation of evidence.

There is no merit in the writ petition and the same is hereby dismissed.

(AMIT RAWAL)
JUDGE

August 06, 2015
savita