

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 9144 of 2015
Date of decision : May 11, 2015

Guru Nanak Khalsa College

..... Petitioner

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat,
and another**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naveen Chopra, Advocate
for the petitioner.

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?

Amit Rawal, J (oral).

The Management has invoked the extraordinary jurisdiction of this Court by challenging the award dated 30.3.2012 passed by the Industrial-Tribunal-cum Labour Court, Panipat whereby reference has been decided in favour of the respondent-workman and he has been held entitled to reinstatement with continuity of service with 25% back wages from the date of demand notice dated 20.10.2004.

Mr. Naveen Chopra, learned counsel for the petitioner-Management contends that the award of the Labour Court is erroneous, perverse, illegal and not sustainable in the eyes of law

on the premises that the respondent-workman was appointed as a safai karmchari and worked during the period 1.7.1998 to 15.4.2004 and was drawing monthly salary @ of 2354/- and had not completed 240 days in a calander year but was engaged during the academic session. He was never called for duty during vacations on account of being appointed on daily wages, thus no appointment letter or termination letter was given and accordingly no notice was given. Though, during the conciliation proceedings the workman was asked to join the duty but the workman did not join the duty and a letter was sent by postal receipt No.1453 Annexure P-3/C. Copies of the attendance register/termination letter postal receipt have been annexed as Annexure P-3/A and P-3/C. The workman did not join for duty. Thus, vide letter dated 7.9.2004 (Annexure P-3/B) the services of the petitioner were terminated. He further, submitted that the services of respondent No.2 was never terminated instead respondent No.2- absented himself and the Management falls under the Essential Services Act, therefore do not fall within the definition of industry and therefore the reference was not maintainable, much less, is illegal and bad in law.

The workman, in his cross examination, admitted that no appointment letter was given neither, he was appointed on any sanctioned post and since respondent No.2- was appointed as daily wager therefore his services have been retrenched as per provisions of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act') and therefore the provisions of Section 25-F of the Act are not attracted. In support of his

submissions he has cited the following case law in Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others 1997 AIR (SC) 3657, Divisional Forest Office, Rohtak Vs. Jagat Singh and another 2010 (2)SCT 196, Zonal Manager, Punjab and Sind Bank Vs. Raj Kumar and another 2008 (1) SLR 575, Meena Rawat Vs. Haryana Urban Development Authority, 2009 (4) SCT 13, Brij Bhushan Vs. Industrial Tribunal-cum-Labour Court, Panipat 1998 (3)SCT 17, Executive Engineer, PWD (B&R) Branch Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court and another 2009 (2) SLR 605, Amir Chand Vs. Incharge Government Murgi Sewa Kender Amritsar 2010 (6) SLR 344, G.M.Tanda Thermal Power Project Vs. Jai Parkash Srivastava 2008 (1) SCT 34, Municipal Committee, Smalkha Vs. Presiding Officer, Ind.Tribunal-cum-Labour Court, 2009 (3)SCT 642, Principal Jawahar Navodaya Vidhyalaya, Devrala Vs. Shri Subey Singh and another 2009 (3) SLR 116, Shyam Kumar Vs. Presiding Officer Industrial Tribunal-cum-Labour Court 2009 SCC P&H 2485, Subhash Chander Vs. The Presiding Officer, Indl.Tribunal-cum-Labour Court, 2009 SCC P&H 1862 and Ajay Kumar Vs. The Presiding Officer and another 2008 SCC P&H 1895 to contend that every department cannot be treated as industry and termination of services of daily wagers would not fall within the realm of Section 25-F, it would be treated as retrenchment under Section 2 (oo) (bb) i.e. where the workman has been appointed by not following any due process, reinstatement ought not to have been ordered by the Labour Court

and at the best the workman would have been entitled to compensation only in those cases, where appointment has been made in consonance with statutory rules and instructions, otherwise the reinstatement, would not be automatic and the Industrial Tribunal should not ordinarily direct for reinstatement.

I have heard learned counsel for the petitioner and appraised the paper book as well as the case law cited at bar.

The alleged termination of the petitioner vide letter dated 7.9.2004 Annexure P-3/B pales insignificant for the reasons that despite the alleged termination of respondent No.2 was for a period w.e.f. 1.7.1998 to 15.4.2004 and on 19.4.2004 (Annexure P-1). The workman had served another demand notice dated 20.10.2004 where it was stated that on 15.4.2004 the services of the workman were terminated and on serving of the demand notice the Conciliation proceedings were conducted and the conciliation officer told the workman to join the duty and the workman submitted application to join the duty on 21.8.2004 but he was not permitted to join. It is a matter of record that while terminating the services of the petitioner on 15.4.2004 the retrenchment compensation as provided under the Act was not paid to the workman.

Assuming for an argument sake, the plea of the Management that the workman had remained absented, is to be accepted even then the Management was required to send a show cause notice to charge sheet by giving an opportunity to the workman at the last available address of the workman in case the workman had chosen to participate in the enquiry, he would have

given a chance to rebut the same and if not in an ex-parte proceedings could have been held , but for the reasons best known no such procedure had been adopted.

In order to lend support to the aforesaid finding, reference is made to the judgment of Hon'ble Supreme Court in **D. K. Yadav, Vs. JMA Industries Ltd. 1993 (3) SCC 259** to contend that a proper enquiry must be held before terminating the services of the workman.

In the instant case, the workman had moved an application for summoning the witness of the Management and he appeared as WW2, who unequivocally admitted that the workman had worked on all days except gazetted holidays and Sundays, though he had completed 240 days in the relevant year. The Management has not been able to prove on record any appointment letter to show that the workman was appointed on contractual basis, much less, as per the exigency of the work and on cessation of the same, his services were no longer required and thus the provisions of Section 2 (oo) (bb) of the Act can be pressed into service. The judgments cited by Mr. Naveen Chopra, learned counsel for the petitioner are on different context. The judgment No.1 and 2 deal with appointment made on the basis of the need of the work. However, in view of what has been observed above, no appointment letter has been provided on work when Management failed to prove the appointment of respondent No.2 was purely on contractual basis. As regards the judgment No.3 was also in context to the explanation 2 (oo) (bb) of the Act. Judgment No. 4 and 5 deals with the

appointment of the workman on purely daily wages and the contract of the workman had come to an end on non-renewal of the contract, therefore it has been held that the case would fall within the purview of Section 2(oo) (bb) of the Act.

Rest of the judgments also deal with the violation of provisions of Section 25-F, 25-G and 25-H of the Act but all the judgments have been rendered taking into consideration of facts of each case. However, in the instant case during the course of arguments this Court has posed a question to the learned counsel for the petitioner that how many safai karmcharies have been retained by the Management. Learned counsel, after obtaining instructions, stated that there is only one regular sanctioned post, thus, in essence, it is ex facie proved on record that the work of all the safai karmcharies has not come to an end and many safai karmcharies have been allowed to work. The Management was well within its right to send a show cause notice and charges and initiate enquiry but not having done so the workman is entitled to reinstatement.

The Hon'ble Supreme Court in **Jasmer Singh Vs. State of Haryana and another Civil Appeal No. 346 of 2015** decided on 13.1.2015 has held that where it has been proved that the workman has rendered 240 days therefore in such a case the workman is entitled to reinstatement.

As per Annexure P-4 the workman had served another demand notice dated 20.10.2004 where it was stated that on 15.4.2004 the services of the workman were terminated and on serving of the demand notice the Conciliation proceedings were

conducted and the conciliation officer told the workman to join the duty and the workman submitted application to join the duty on 21.8.2004 but he was not permitted to join and the authorities told him that he was absent and thus a registered letter dated 11.9.2004 was sent by the workman and another registered letter dated 7.9.2004 (Annexure P-3/B whereby his services had been terminated. The contents of letter reads thus:-

Guru Nanak Khalsa College
(A Post Graduate Institution)
KARNAL-132001

Ref No.GNKC/1589

Date: 7 September 2004

Ref No.....

Shri Karambir

S/o Shri Lilu Ram

R/o Vill.Kharajpur, P.O.Kunjpura (Karnal)

You were intimated vide college registered letter reference No. G.N.K.C/1571 dated 30 August and College registered letter reference No. G.N.K.C/1573 dated 31 August 2004 that you have absented from 30 August and 31 August 2004. After this you again absented from 1 September to 7 September 2004 (till date) continuously.

You have neither bothered to inform nor took the trouble to come personally. This clearly shows that you don't want to continue in the College as daily wages worker. Keeping into consideration your behaviour your services are terminated.

For information: Officer cum Conciliation officer
Khillon Complex opposite Bus Stand
Karnal

Even assuming for an argument sake that the workman in conciliation proceedings was directed to join the duty and thereafter absented and according to the Management he

abandoned the job, is totally alien to the settled proposition of law.

The view taken by the Labour Court ordering reinstatement with continuity of service and 25% back wages has been given only after noticing the fact that there was a violation of Section 25-F of the Act.

No fault can be found with the findings rendered by the Labour Court as the findings are based on the appreciation of evidence brought on record.

There is no merit in the writ petition. Accordingly the award of the Labour Court is upheld and the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

May 11 , 2015
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