

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 1077 of 2015 (O&M)
Date of decision:- 23.07.2015

Principal M.R. Govt. College

.....Appellant

Versus

Dalip Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Arshwinder Singh, Addl. A.G., Punjab .

S.S SARON, J.

The present Letters Patent Appeal has been filed by the appellant - Principal M.R. Government College, Fazilka against the impugned order dated 29.04.2015 passed by the learned Single Judge in CWP No. 655 of 2014, whereby the writ petition filed by respondent No. 1 workman has been allowed and the Award of the Labour Court dated 10.10.2013 (Annexure P12) has been set aside, besides, respondent No.1 has been held entitled to reinstatement with continuity of service along with 50 % back wages. Along with the Letters Patent Appeal, CM No. 2254-LPA of 2015 has been filed seeking condonation of 52 days' delay in filing the appeal.

We have heard learned counsel for the appellant and with his able assistance perused the record of the case.

Respondents No. 1-workman in his statement of claim submitted that he was appointed as a Chowkidar with the appellant since

05.09.2000 on permanent basis. He was drawing salary of Rs.2200/- per month. His services were terminated on 15.09.2004 without notice, charge sheet, compensation or holding any inquiry. The said termination of his services, it was alleged was illegal, unjustified, improper, mala fide, unfair labour practice and against the principles of natural justice as also the provisions of Industrial Disputes Act, 1947 ('Act' for short). Juniors to him were still working with the appellant, besides new recruits had been engaged after the termination of his services. He was still unemployed. Accordingly, a prayer for reinstatement with continuity of service and full back wages, besides, costs was made.

The appellant-management in its reply claimed that the respondent No. 1 workman had no legal right at all and he was never given permanent employment in the College. As such, he was not entitled for any claim. He was given pay from the students fund as his employment was purely on temporary basis. It was alleged that the services of respondent No. 1 were put to an end by the Employment Department; therefore, there was no question of issuing any notice or charge sheet, etc. It was also submitted that the appellant was not responsible for the unemployment of respondent No.1 and there was no contract between the College (appellant) and respondent No.1 to provide him employment.

Rejoinder was filed by the respondent No.1-workman and the averments made in the claim petition were reiterated.

The question that was considered by the learned Industrial Tribunal was that whether the termination of services of respondent No.1 was justified and in order. On considering the matter, the learned Industrial Tribunal vide its Award dated 10.10.2013 (Annexure P-12) found no merit in

the claim of respondent No. 1 and dismissed the same.

Respondent No. 1 aggrieved against the Award of the learned Industrial Tribunal filed CWP No. 655 of 2014 in this Court, which has been allowed by the learned Single Judge vide impugned order dated 29.04.2015. The learned Single Judge noticed that in para 15 of the Award dated 10.10.2013 (Annexure P-12), the respondent No.1 to prove the fact that he had completed 240 days in the preceding calendar year had examined himself who stated that he was employed as a Chowkidar on 05.09.2000 and he worked till 14.09.2000. Further, a reference was made to the cross-examination of Darshan Singh, Principal (MW-2), who appeared for the appellant. He in his deposition before the learned Industrial Tribunal stated as correct that the workman (respondent No.1), had worked for the period from 05.09.2000 to 14.09.2004. A reference was also made to documents Ex.W-21 and Ex.W-22, which were issued by the appellant college. The learned Industrial Tribunal, however, held that mere admission of the witness i.e. Darshan Singh, Principal (MW-2) examined by the appellant did not mean that the workman had regularly worked for the said period from 05.09.2000 to 14.09.2004. Besides, on the basis of admission, it cannot be said that the workman continuously worked with the respondent from 05.09.2000 to 14.09.2004. The learned Single Judge held that the observations of the learned Industrial Tribunal were not only erroneous but perverse as the workman (respondent No.1) discharged the onus qua his employment, payment of salary, appointment letter etc. The said evidence, it was observed, was enough to show that respondent No.1 had worked for more than 240 days. Despite that the learned Industrial Tribunal addressed to a point which was not a point for determination inasmuch as a letter dated

03.09.2004 (Ex.W14) issued by the Employment Exchange was taken into consideration on the basis of which it was held that respondent No.1 was appointed as Cycle Chowkidar and considering his appointment on 04.09.2004, it was held that he had not worked for more than 240 days in the relevant year upto 15.09.2004. The said finding, it was observed, was not based on the other evidence that was on record. Besides, a reference was made to the judgment of the Hon'ble Supreme Court in Mohan Lal v. Management of M/s Bharat Electronics Ltd., (1981) 3 SCC 225. In the said case it was held that if immediately preceding the date of termination of service, such workman actually worked for not less than 240 days within a period of 12 months under the employer, he would be deemed to be in 'continuous service' for one year under Section 25-B (2) (a) (ii) of the Act and therefore, he would be entitled to retrenchment compensation under Section 25-F of the Act. Termination of his services without compliance with Section 25-F of the Act, it was held, would render the order of termination *void ab initio* entitling him to a declaration for continuation in service with full backwages.

After giving our thoughtful consideration to the matter, it is to be noticed that there is indeed an admission on the part of Darshan Singh MW-2 who was the Principal of the appellant-College and he in no uncertain terms stated that the workman worked for the period from 05.09.2000 to 14.09.2000, which in fact is the case set up by respondent No.1 in his statement of claim. Therefore, admission being the best evidence that an opposing party can rely upon and the fact that Darshan Singh, MW-2 Principal of the appellant College while appearing as MW-2 indeed deposed that the workman (respondent No.1) had worked for the

period from 05.09.2000 to 14.09.2004, it cannot be said that the said admission was a simple one and it did not amount to proving the fact that the workman had worked for a period of 240 days in the calendar month preceding his termination from the services. The learned Single Judge rightly concluded that the finding of the learned Tribunal was not based on evidence brought on record.

In the circumstances, we find no infirmity with the order passed by the learned Single Judge and consequently, there is no merit in the appeal. The appeal is, accordingly, dismissed. The question of delay in filing the appeal, in the circumstances, is only academic and the same is also dismissed.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

July 23, 2015
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