

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGAH**

LPA No.517 of 2015 (O&M)

Date of decision: 06.04.2015.

Divisional Forest Officer, Amritsar

..... Appellant.

Versus

Gurpartap Singh and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arshwinder Singh, Additional Advocate General, Punjab,
for the appellant.

S.S. Saron, J.

The Letters Patent Appeal has been filed by the appellant against the judgment and order dated 30.09.2014 passed by the learned Single Judge in CWP No.5668 of 2012 whereby the writ petition filed by Gurpartap Singh (respondent No.1) has been allowed with a direction to reinstate him in service on daily wages with 50% back wages.

Along with the appeal, civil miscellaneous application, i.e. CM No.1050-LPA of 2015, has been filed seeking condonation of 151 days' delay in filing the appeal.

We have heard learned counsel for the appellant and with his assistance gone through the records of the case.

Respondent No.1 filed a petition in this Court seeking quashing of the award dated 19.01.2012 (Annexure P8) vide which the reference made to the Industrial Tribunal-cum-Labour Court, Amritsar ('Labour Court' - for short) by the State Government in terms of Section 10 (1) (c) of the Industrial Disputes Act, 1947 ('Act' - for short) was decided

against him. Respondent No.1 prayed for reinstatement in service with full back wages.

Respondent No. 1 worked as a Beldar in a nursery of the appellant at Tarn Taran. He had worked from 05.01.1997 till his services were terminated on 07.01.2007. According to him, his services were dispensed with without any notice, charge-sheet, enquiry and without complying with the provisions of Section 25-F of the Act. Respondent No.1-workman served a demand notice on 21.08.1997 (Annexure P1). He then filed his statement of claim (Annexure P2) before the learned Labour Court at Amritsar. The appellant-department filed its written statement (Annexure P3) and contested the claim of respondent No.1-workman. It was stated that respondent No.1-workman worked as Beldar against a permanent post from 05.01.1997 for Rs.2525/- per month. His duty was at the Nursery, Tarn Taran and he worked up to January 2007. He was removed from service on 07.01.2007. He was paid wages on monthly basis. No wages had remained unpaid. It is stated that the work was of seasonal nature and labour was employed on daily wages seeing the work.

The learned Labour Court considered the reference that was made which was to the effect:-

“Whether termination of the services of Sh. Gurpartap Singh has been made by the management illegally and unlawfully? If so, to what relief/exact amount of compensation he is entitled?”

The appellant raised contentions to the effect that respondent No.1 did not serve as a Beldar against a permanent post; besides, the appellant was a Forest Department and not an ‘industry’ and respondent No.1 was not a ‘workman’. It was submitted that as and when labour was

required for the nursery, then labour was engaged on daily wages basis and on completion of seasonal work, the labour was disengaged.

The learned Labour Court in its award dated 19.01.2012 (Annexure P8) in view of a Division Bench judgment of this Court in State of Punjab, through Assistant Director, Horticulture, Faridkot v. The Presiding Officer, Labour Court, Bhatinda and another, 1994 (2) RSJ 130, held that the Horticulture Department was not an 'industry' and respondent No.1 was not working in an 'industry'. It was further considered whether respondent No.1 was ever appointed as Beldar against a permanent post. It was held that no evidence had been adduced with regard to advertisement of the post of Beldar; besides, no evidence was there on record with regard to the appointment and joining of respondent No.1 with the appellant. There was no proof on record that the workman ever received salary against a permanent post. In the absence of adequate proof it was held not possible to hold that respondent No.1 was ever appointed as a Beldar with the appellant. The further question that was considered was whether the appellant terminated the services of respondent No.1 on 07.01.2007, as had been alleged. It was held that respondent No.1 rendered services on daily wage basis with the appellant in the nursery for seasonal work and not against a permanent post as Beldar. Accordingly, the reference was answered against respondent No.1.

Respondent No.1 aggrieved against the award dated 19.01.2012 (Annexure P8) passed by the learned Labour Court filed a writ petition in this Court assailing the same.

A learned Single Judge of this Court noticed that in the written statement filed by the appellant, the denial was to the effect that the workman-respondent No.1 had not served as Beldar against a permanent

post from 05.01.997 onwards; however, it was admitted categorically that he served at the Nursery at Tarn Taran. It was admitted in the written statement that respondent No.1 'as per record' had worked in the nursery at Tarn Taran in the Forest Department up to January 2007, he was paid wages on monthly basis and no wages remained unpaid. It was further admitted by the appellant that respondent No.1 was removed from service on 07.01.2007 by averring; "contention of worker that he had been removed from service on 07.01.07 is totally correct. It is important to mention here that because of shortage of work, he was removed from service." In the face of the said pleadings in the written statement, it was held that it could not be said that the petitioner (respondent No.1 herein) never worked from 1997 to 2007, which makes a decade of service of whatever kind it may have been and that if he had worked 'as per record', no record was produced to rebut the assertion of the petitioner (respondent No.1 herein). Besides, a reference was made to para No. 3 of the impugned award dated 19.01.2012 wherein the learned Labour Court recorded reasons as follows:-

"3. Management contested the reference by filing written statement, in which it was admitted (should be denied) that the workman had been working with the management since 5.1.1997 at the rate of Rs.2525/- per month as Beldar against permanent post. It was also admitted (should be denied) that his duty was at Tarn Taran Nursery. Management also took the stand that if it is admitted to be correct that workman ever served with the management against regular post, then

he is bound to adduce proof if he is in possession.”

The learned Single Judge with reference to the above observations, observed as to from where had the learned Labour Court observed that the words in parenthesis to suggest that the admission of the State should actually be read as “(should be denied)” and that it was of obscure origin and was an uncalled for remark which was an imagined addition to the specific words of admission used in the written statement. Once this fallacious chain of reasoning had set in and weighed in the mind of the learned Labour Court it was observed that it was seriously deflected from the path of justice and then many reasons were found to non-suit the petitioner (respondent No.1 herein) on jurisdictional facts, the proof of which were necessary to steer a claim for reinstatement to service, i.e. the activity being not an ‘industry’ and the claimant (respondent No.1) not a ‘workman’ by definition. It was further observed that the learned Labour Court also erred in keeping itself pre-occupied by the word ‘Beldar’. A Beldar it was said was no more than a labourer/workman who may be paid on daily wages in the prevalent muster rolls system of employment. If the State did not deny that he had worked albeit as a daily wager or on seasonal basis in a nursery managed by the Forest Department, the claim ought not to have been thrown out on mere *ipse dixit* of the learned Labour Court. In the face of the admission by the State, it had taken upon itself the burden of disproof, onus having shifted upon them by their admission and the workman was not required to substantiate his stand by any further proof or to have led evidence in support of an admission made by the department in the pleadings.

The above reasoning of the learned Single Judge clearly shows that the admissions which are there on the face of the record made by the appellant have been read as denied by the learned Labour Court. In fact, indeed the admissions by the State were liable to be read as such and not as denials. Therefore, it is evident that it is the admitted case of the appellant in its written statement (Annexure P3) that respondent No.1 was working as Beldar against a permanent post from 05.01.1997 for Rs.2525/- per month and that he worked in the nursery of the appellant at Tarn Taran till 07.01.2007. He was then removed from service because of shortage of work.

As regards the question as to whether the Forest Department was an 'industry', it was held that the reliance placed by the learned Labour Court on State of Punjab through Assistant Director, Horticulture, Faridkot v. The Presiding Officer, Labour Court, Bhatinda and another (supra), had been passed two decades back and much water had flown since then. A reference was made to the decision in Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293, wherein a three Judge Bench of Hon'ble the Supreme Court took the view that the Forestry Department of the State is an 'industry'. However, a different view was taken in State of Gujarat v. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713, by a Bench of two Hon'ble Judges of the Supreme Court. This gave rise to a conflict which was referred to a five Judge Bench in State of U.P. v. Jai Bir Singh, (2005) 5 SCC 1, to remove the apparent conflict in the two decisions. In Jai Bir Singh's case (supra), Hon'ble the Supreme Court *inter alia* said that the decision in Bangalore Water Supply and Sewerage Board v. A. Rajappa, AIR 1978 SC 548 : (1978) 2 SCC 213 deserved reconsideration by a Larger Bench.

The learned Single Judge in any case observed that reliance could not have blindly been placed by the learned Labour Court solely on the basis of the ruling of this Court in the presence of a contrary opinion expressed by a three Judge Bench of the Supreme Court in Jagannath Maruti Khondare's case (supra) notwithstanding reference to a Larger Bench for judicial review of the entire canvas of Section 2 (j) of the Act. Presently, the Court could not commit itself to any particular view since the matter was *sub judice* before Hon'ble the Supreme Court.

The entire foundation and the superstructure of the award of the learned Labour Court was held to be so intrinsically defective that no reasonable person could endorse its supporting reasoning which was in complete misreading of the pleadings and the evidence on record. The learned Labour Court, it was held, had used extra paint and gloss to draw a wholly new landscape by perverting the pleadings to find ways to deny relief to respondent No.1-workman. Accordingly, the award was held to be unsustainable in the eyes of law or on facts established on record. Accordingly, the petition was accepted and the impugned award passed by the learned Labour Court was quashed. A direction was issued to the respondents (appellant herein) to reinstate the petitioner (respondent No.1 herein) to daily wage service with 50% back wages which were deemed just and appropriate in the circumstances as the judicial trend was not to award full wages automatically. The direction was subject to final outcome of the pending reference to larger Bench of Hon'ble the Supreme Court in Jai Bir Singh's case (supra).

The reasoning adopted by the learned Single Judge is just and proper. Respondent No.1 had admittedly worked with the appellant-department against a permanent post from 05.01.1997 till he was removed

from service on 07.01.2007 due to shortage of work. He had thus worked for a period of a decade with the appellant-department. He worked as Beldar at the nursery at Tarn Taran against a permanent post and drew a salary of Rs.2525/- per month. The pleadings on record clearly admit the engagement of respondent No.1 as Beldar with the appellant-department. The appellant also admitted that respondent No.1 was disengaged due to shortage of work in 2007. This meant that retrenchment compensation was not paid on the date of his termination which indeed was in violation of the provisions of Section 25-F of the Act.

In the circumstances, we find no merit in the appeal and the same is accordingly dismissed. Since the appeal has been dismissed on merit, the question of delay in filing the appeal is only academic and, accordingly, the civil miscellaneous application seeking condonation of delay in filing the appeal is also dismissed.

(S.S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

06.04.2015
Ramesh/A.Kaundal