

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

LPA No.871 of 2015 (O&M)

Date of Decision: 03.08.2015

Executive Engineer, Provincial Division No.I, PWD (B&R)
Branch, Gurgaon

..... Appellant

Versus

Lallu Ram and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sandeep Mann, Sr. DAG, Haryana,
for the appellant.

S.S.SARON, J.

The appellant-Executive Engineer, Provincial Division No.I, Gurgaon has filed this appeal against the judgment and order dated 22.01.2015 passed by the learned Single Judge in CWP 1078 of 2015 whereby the petition that had been filed against the award dated 07.10.2014 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon ('Tribunal' - for short) has been dismissed. Along with the appeal CM No.1823-LPA of 2015 has been filed seeking condonation of 76 days' delay in filing the appeal.

The respondent No.1-Lallu Ram was appointed as a Sweeper in PWD (B&R) Rest House on 15.02.2003. He rendered continuous service till 31.03.2009. He was not given any appointment letter. However, his services were terminated on 01.04.2009 without issuing any notice and without assigning any reason. After termination of his services, he was enrolled by a contractual agency for doing his job. It was alleged by the respondent No.1-workman that the termination of his service was in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act' - for short) inasmuch as he was not given three months' notice or pay in lieu thereof. At the time of termination of his service, he was drawing monthly salary of ₹ 3840/-. He was unemployed since the date of his termination. Therefore, he sought reinstatement in service with continuity of service and full back wages as also other benefits.

The State Government in terms of Section 10 (1)(c) of the Act referred the industrial dispute to the learned Tribunal. The reference was to the effect as to whether the termination of services of respondent No.1-workman was justified or not? If not, to what relief was he entitled in that regard.

The appellant appeared before the learned Tribunal and in the written statement (Annexure P-2) that was filed, it was admitted that respondent No.1-workman had worked

from 15.02.2003 to 31.03.2009. It was further stated that he was engaged on Deputy Commissioner's rates on job work and not on regular basis. Besides, he was not appointed by the Employment Exchange or by proper selection process and he was engaged for a specific job work. He was not working on regular basis and he had left his job on his own. No termination letter was issued.

The learned Tribunal vide its award dated 07.10.2014 (Annexure P3) held that the termination of services of the workman (respondent No.1) by the appellant was illegal and against the provisions of the Act. Accordingly, he was held to be entitled to reinstatement in service with continuity of service and full back wages from the date of termination of his service i.e. 01.04.2009 till reinstatement in job along with all consequential benefits.

In the writ petition filed by the appellant, the admitted position as pleaded in para 1 of the 'Reply on Merits' in the written statement (Annexure P-2) before the learned Tribunal that respondent No.1-workman had worked for the period from 15.02.2003 to 30.03.2009, was sought to be diluted and it was pleaded that respondent No.1-workman was engaged as a Sweeper with the appellant-Department on daily wages on Deputy Commissioner's approved rates for seasonal work from 15.02.2003 to 31.01.2004 and then from 01.03.2008 to 31.03.2009. For the remaining period from

01.02.2004 to 29.02.2008, it was stated that he was employed through various contractual agencies after calling competitive quotations for seasonal work. It is also submitted that respondent No.1-workman had abandoned his job and then he served a demand notice dated 10.03.2010 (Annexure P-1). Therefore, the changed stand of the appellant is that for the period from 01.02.2004 to 29.02.2008, respondent No.1-workman was employed through contractual agency. However, it is evident that his services were dispensed with w.e.f. 01.04.2009. For the period from 01.03.2008 to 31.03.2009, it is admitted position of the appellant-department that he worked on daily wages on Deputy Commissioner's approved rates. Therefore, he had admittedly worked for more than 240 days in a calendar year immediately preceding the date of his termination from service. The stand that respondent No.1-workman had abandoned his job is not tenable and there is nothing to show that he had on his own abandoned the job. Therefore, in view of the admitted infraction of Section 25-F of the Act, we find no reason or justification to interfere with the impugned order of the learned Single Judge. Even otherwise, we are of the view that the stand regarding abandonment of job by respondent No.1-workman is not tenable and no specific date of abandonment of job has been given or mentioned and it is after 31.03.2009 that his services were dispensed with. The demand notice

(Annexure P-1) is dated 15.03.2010. It mentions the date of termination of his service as 01.04.2009 without issuing any notice/reason. After termination of his service, it is mentioned that he was enrolled with a contractual agency for doing his job.

No material has been placed on record to show that respondent No.1-workman had abandoned his job. Finding no merit in the appeal, the same is, accordingly, dismissed.

Since the appeal has been dismissed on merits, the question regarding delay in filing the appeal, is only academic. Hence, the CM No.1823-LPA of 2015 seeking condonation of 76 days' delay in filing the appeal is also dismissed.

(S.S. SARON)
JUDGE

03.08.2015
'yogesh'

(RAMENDRA JAIN)
JUDGE