

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 12801 of 2014
Date of Decision: 18.3.2016.**

State of Haryana and others

.....Petitioners

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Ambala and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Raj Kumar Makkad, DAG, Haryana.

Mr. Ashutosh Kaushik, Advocate
for respondent No. 2.

SABINA, J.

Petitioners have filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 14.1.2014 (Annexure P-14).

Respondent No. 2 had raised an industrial dispute by serving a demand notice challenging her termination. The appropriate Government referred the dispute to the Labour Court, Ambala for adjudication.

Case of respondent No. 2, in brief, was that she was working with the petitioners as a part time Sweeper since the year 1986. Her services had been illegally terminated vide order dated 5.7.2004. Respondent No. 2 had filed CWP No. 12865 of 2004 in this Court seeking regularization of her services. The said writ petition was disposed of vide order dated 9.8.2005 (Annexure P-3) directing the respondents to consider her case. Thereafter,

respondent No. 2 filed COCP No. 234 of 2006 in this Court and the same was dismissed vide order dated 6.8.2007 (Annexure P-5). Respondent No. 2 was granted liberty to challenge the order dated 28.11.2005 whereby her request for regularization of her services was declined by the management. Respondent No. 2 thereafter filed CWP No. 7062 of 2008 and the same was dismissed by this Court vide order dated 6.11.2008. (Annexure P-6). Thereafter respondent No. 2 served demand notice dated 2.9.2009 challenging her termination.

Petitioners, in their written statement, averred that respondent No. 2 had worked with them as a part time Sweeper from February 1988. Respondent No. 2 was working for one hour in a day. The claim of respondent No. 2 for regularization of her services was rightly rejected by the petitioners. Services of the respondent No. 2 were dispensed with on 6.7.2004 as the management had taken a decision to outsource auxiliary services like security, sweeping, cleaning etc.

On the pleadings of the parties, following issues were framed by the Labour Court:-

- “1. Whether the termination of the services of the workman is liable to be set aside being wrong, illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service? OPW*
- 2. Whether the respondent department falls within the definition of 'industry' as defined under Section 2(J) of the Industrial Disputes Act ? OPM*

3. *Whether the applicant is a workman under section 2(S) of the Industrial Disputes Act, 1947? OPM*
4. *Whether the reference is time barred? OPM.*
5. *Relief.”*

Parties led their evidence in support of their respective pleas.

Labour Court, Ambala vide award dated 14.1.2014 (Annexure P-14) ordered reinstatement of respondent No. 2 with continuity of service and 50% back-wages. Hence, the present petition by the petitioners/State.

I have heard the learned State counsel and learned counsel for respondent No. 2 and have gone through the record available on the file carefully.

In the present case, although, respondent No. 2 had worked with the petitioners as a part-time Sweeper but admittedly she had put in a number of years of service with the petitioners. Services of respondent No. 2 were terminated without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act' for short). Although, petitioners had taken a plea in the written statement that the management had decided to outsource the auxiliary services like sweeping etc. however, no other evidence in this regard was led on record apart from the statement of MW-1 Shiv Ram Saini. A perusal of statement of MW-1 (Annexure P-12) reveals that he had not given any details as to when the work of sweeping was actually handed over to the contractor. Moreover, respondent No. 2 had been working with the petitioners for a number of years when her services were terminated without complying with the mandatory

provisions of Section 25 of the Act. In these circumstances, the Labour Court rightly held that respondent No. 2 was entitled to be reinstated in service.

No ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India is made out.

Dismissed.

**(SABINA)
JUDGE**

March 18, 2016
Gurpreet