

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22369 of 2010

Date of Decision:- 15.7.2016.

Headmaster, Govt. Primary School, Ledi, Distt. Yamuna Nagar and
another

.....Petitioners

Versus

Veena Devi and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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?

Present: Mr. Anil Mehta, DAG, Haryana.

Mr. Ashwani Bakshi, Advocate for respondent No.1.

Mr. Jitender Singh Chahal, Advocate for respondent No.3.

P.B. BAJANTHRI, J.

In this writ petition, the petitioners have questioned the award passed by the Labour Court dated 25.5.2010.

First respondent is stated to have been appointed as a Cook under the Mid-Day Meal Scheme introduced by the Government of Haryana in order to implement decision of Hon'ble the Apex Court in CWP No.196 of 2001 (***People's Union for Civil Liberties Vs. Union of India and others***). On 03.08.2006, a Resolution was passed by the Village Education Committee, Government Primary School, Ledi (Yamuna Nagar) to terminate the

services of respondent No.1 from the post of Cook. Thereafter, on 07.08.2006, services of the first respondent were dispensed by quoting various complaints against her. The Labour Court passed the award in favour of the first respondent after due consideration of the fact that respondent No.1 was appointed as a Cook under the Mid-Day Meal Scheme introduced by the Government of Haryana on the directions of the Apex Court in a case. It was noticed that termination of the first respondent on the basis of serious allegations without hearing first respondent by issuance of show cause notice or holding an inquiry her services have been terminated. Feeling aggrieved by the order of Labour Court dated 25.5.2010, the present writ petition has been filed by the Department.

Learned counsel for the petitioner contended that the first respondent was appointed on contract basis. She has no right to continue. Based on the conduct of the first respondent and various complaints received, a Resolution has been passed by the Village Education Committee and thereafter, her services have been terminated. There is no flaw in the process of termination since termination is preceded by a Resolution. In the Resolution, serious allegations have been considered and there was a proposal for removal of the first respondent. The Labour Court failed to appreciate the fact that the first respondent was only an *ad hoc* employee and there were serious allegations against her. Therefore, for an *ad hoc* employee, no notice or inquiry is necessary. It was further contended

that appointing authority as on this day is the Department. When the first respondent was appointed, relevant authority was concerned Panchayat. Therefore, the Department is not in a position to take her to duty. The Labour Court, thus, erred in noticing that the first respondent was only appointed on *ad hoc* basis and her termination need not be preceded by notice or inquiry.

Per contra, learned counsel for the first respondent vehemently contended that even if services of a temporary employee is to be terminated, minimum requirement of issuance of notice, obtaining explanation or being heard insofar as serious allegations made against *ad hoc* employee. The Village Education Committee before passing the Resolution as well as passing order of termination the first respondent has not been heard. Courts have time and again held that even for passing an administrative order, reasons must be assigned and necessary opportunity should be given. In the present case, on serious allegations, first respondent's services have been terminated. Having regard to the nature of allegations stated in the Resolution, the first respondent may not get employment elsewhere, therefore, it is necessary before making any observation as well as passing order of termination, inquiry should have been held. Therefore, the Labour Court has rightly passed the award in favour of the first respondent.

Heard learned counsel for the parties.

The Labour Court gave its finding vide the impugned

Award dated 25.5.2010 which reads as under:-

“Moreover, Raibir Singh, Ex-Sarpanch under whose tenure the petitioner-workman was appointed, appeared as WW2, who not only supported the claim of the petitioner-workman, also asserted that the petitioner-workman was appointed after following the rules and regulations of the department and during her tenure there was no complaint against the petitioner-workman from any corner and this evidence of the petitioner goes totally un rebutted and unchallenged.

The aforesaid position establishes that the services of the petitioner-workman who was appointed as per rules has been terminated without holding any enquiry. The Ld. Authorized representative for the respondents-management has not been able to point out that as to what deterred the respondents-management to go for an enquiry. As such, the order of termination based on serious allegations are not sustainable in the eyes of law. Consequently, the punishment order are liable to be set-aside, and are set-aside.

Accordingly, this issue is answered in favour of the petitioner workman and against the respondents-management.”

The petitioners' contention that for termination of *ad hoc* employee, no notice or inquiry is required cannot be accepted having regard to the facts of the present case wherein in the Resolution, serious allegations have been made against the first respondent. Without hearing the first respondent, Resolution has been passed to terminate the service and thereafter order of termination has been

passed. Having regard to the nature of allegations made in the Resolution, first respondent rightly may not get any employment. Therefore, it is a stigmatic order passed by the Village Education Committee. The Courts have time and again held even for passing an administrative order if it is civil consequence affected party should be given an opportunity of at least show cause notice. The minimum requirement of show cause notice is not issued to the first respondent so also in not holding inquiry against the allegations stated in the Resolution. Supreme Court in the case of Chamoli Dist. Coop. Bank Vs. Raghunath Singh Rana and others disposed of on 17.5.2016 held as under:-

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen reported in (1964) 3 SCR 616 has laid down following:-

“....An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to

examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the inquiry officer records his findings with reasons for the same in his report.”

In view of the facts and circumstances, the petitioners have not made a case so as to interfere with the award passed by the Labour Court.

Writ petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

July 15, 2016.

sandeep sethi