

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

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**CWP-6073-2014 (O&M)
Date of decision: 27.07.2016**

Jagdish Singh

....Petitioner

Versus

Managing Director Punjab AGro and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. I.B.Bhandari, Advocate for the petitioner.

Mr. Nitin Kaushal, Advocate and
Mr. Shekhar Kumar, Advocate for respondents No.1 and 2.

P.B. Bajanthri, J.(Oral)

In the instant writ petition, the petitioner has assailed the award
of the Industrial Tribunal, Bathinda dated 14.08.2013.

2. The workman-petitioner was appointed as a Chowkidar vide
office order dated 21.03.1997. Nomenclature of the respondent was changed
from PACIC to Punjab Agricultural Export Corporation Limited in the

month of December, 2002. Even thereafter, the petitioner workman was continued in service. His services were terminated on 25.02.2004 without notice, charge-sheet, enquiry or not any compensation was paid to him. Industrial dispute was raised. Industrial Tribunal Court framed the following issue:-

“Whether termination of services of workman Jagdish Singh is justified and in order? If not so, to what relief he is entitled?”

3. Learned counsel for the petitioner vehemently contended that he was appointed regularly as a Chowkidar as is evident from the nature of appointment and discharging duties of the post of Chowkidar. He has been paid salary attached to the post of Chowkidar. Thus, provident fund amount has been deducted from his salary. Therefore, Award of the Labour Court and reasoning assigned therein that the petitioner workman was appointed on contract basis, question of termination do not arise is incorrect. Learned counsel for the petitioner submitted that in view of the deduction of provident fund it indicates that petitioner was a regular employee and not a contract employee. Thus, award is to be set aside.

4. On the other hand, learned counsel for the respondent submitted that petitioner-workman was appointed on contract basis which is evident from the agreement entered in the year 2003 (Annexure R1/2) for the period from 01.01.2003 to 31.12.2003. Therefore, status of the workman is only a contract appointee and not entitled for reinstatement with continuity in service with back wages. There is no infirmity in the award of the Labour Court. Hence the writ petition is liable to be rejected.

5. Heard learned counsel for the parties.

6. The petitioner is stated to have been appointed as Chowkidar in the year 1997 and his services have been terminated on 25.02.2004. During the intervening period provident fund has been deducted from the salary. Therefore, it was contended by the learned counsel for the petitioner that he was appointed regularly or temporarily and not on contract basis as contended by the respondent. Learned counsel for the respondent submitted that petitioner was appointed on contract basis with reference to Annexure R1/2. In the agreement nowhere it is stated that amount towards provident fund would be deducted. It is undisputed in respect of deduction of provident fund. The respondents have not furnished any document to show that petitioner was appointed on contract basis from 1997 to 2003. They have produced only one contract appointment for the period from 01.01.2003 to 31.12.2003. Going by contract appointment/agreement, petitioner's services should have been terminated on 01.01.2004. They have not stated how the petitioner was continued from 01.01.2004 till 25.02.2004. Whether new agreement or contract has been entered into or not?

7. In view of these facts and circumstances, the respondents have not made out a case to contend that petitioner was appointed on contract basis. Shri Ranvir Singh, Assistant General Manager in his affidavit dated 16.07.2016 mentioned that provident fund was deducted from the salary of the petitioner. For contract appointees salary would not be paid. Salary would be paid only for regular appointed employees. Whereas, for contract appointees lump-sum amount would be paid for the month or for the entire period like consolidated pay. Therefore, the respondents have not made out a case that the petitioner was appointed on contract basis.

8. Having regard to the above facts and circumstances, Award dated 14.08.2013 is set aside. The respondents are directed to reinstate the petitioner within a period of 2 months from today. It is made clear that petitioner is not entitled for back wages.

27.07.2016

pooja saini

**(P.B. BAJANTHRI)
JUDGE**