

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

LPA No.1850 of 2016 (O&M)

Date of Decision :21.11.2016

Satinder Kumar Sharma

....Appellant

Versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

Present: Mr.Vivek Khatri, Advocate
for the appellant.

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MAHESH GROVER, J.

This appeal is directed against the judgments of the learned Single judge dated 08.09.2015 and 17.08.2016 upsetting the award of the Labour Court which was answered in favour of the appellant who had claimed a reference questioning the termination of his services on the plea of violation of Section 25-F of the Industrial Disputes Act (in short 'the Act'). The appellant had pleaded continuous employment for six years under the Government (respondents) from 02.12.1999 till 05.05.2004.

The respondents contested the claim of the appellant to raise a preliminary objection that the appellant was never engaged by the department. The relationship of employer and employee was thus disputed and it was clarified that the appellant had worked as an Electrician on daily wages. It was specifically

pleaded that the appellant was engaged as a contract labour on DC Rates and never officially employed by the department. The appellant had made a prayer for regularisation of his services earlier and even though no representation was received by the respondents they decided the claim set up by the appellant for regularisation upon the directions given by this Court in CWP No.3435 of 2004. The entire claim of the appellant was also negated as the appellant was never the employee of the department.

The Labour Court after examining the evidence on record concluded that indeed there was no appointment letter issued by the respondents to the appellant nor was he paid wages directly by the respondents but went on to rely upon the evidence such as identity cards etc. to establish that the appellant had performed duties at the residence of the Chief Minister Haryana to conclude the relationship of employer and employee as also the engagement of the appellant with the respondents and answered the reference in his favour by further holding violation of Section 25-F of the Act. In the given circumstances, the Labour Court denied reinstatement giving reasons that such a course would imply regularisation to which he was not entitled in terms of the policy dated 01.10.2003. A compensation of Rs.50,000/- was granted.

The learned Single Judge concluded that the burden of proof to prove his case of illegal termination was squarely on the appellant and since he was unable to discharge this onus, declined interference largely on the ground that Rs.50,000/- as compensation be treated as solatium by way of apology for the costs of long drawn litigation. The Court gave sufficient reasons that the appellant had failed to establish the relationship of employer and employee and merely because identity cards etc. were available on record would not be suggestive of the fact of employment with the respondents.

After hearing the learned counsel for the appellant, we are of the opinion that the award of the Labour Court was indeed a bundle of contradictions. To rely on the identity cards and other related material to establish the relationship of employer and employee would be a reasoning seeped in utter fallacy. The nature of engagement of the appellant warranting entry into the Chief Minister's house would necessitate such record for security reasons or otherwise. The learned Single Judge was thus right in negating such evidence. That apart, he noticed from the record, in particular the statement of the management witness that the services of the appellant were engaged through a contractor. Concededly, the appellant had no appointment letter or other cogent evidence/material or even remote or direct evidence

against the respondents. In these circumstances, the findings of the learned Single Judge cannot be faulted with. In fact, the compensation granted by the Labour Court was also equally commented adversely by the learned Single Judge which arrangement was left unsettled on equitable grounds, which we too would deem it inappropriate to unsettle. The appeal is held to be without any merit and is dismissed.

Apart from this, the appeal is also barred by an inordinate delay of 341 days which we do not intend to condone in the absence of any plausible explanation.

Dismissed.

(MAHESH GROVER)
JUDGE

21.11.2016
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No