

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

LPA No. 79 of 2016(O&M)

Date of Decision: January 22 , 2016.

The Executive Engineer, Public Health Engineering

..... APPELLANT (s)

Versus

Mahavir Prashad and another

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE RAJIVE BHALLA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. R.D.Sharma, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

CM No.181-LPA of 2016

The prayer in this application is to condone delay of 37 days in filing the appeal.

Heard.

For reasons stated in the application and the arguments addressed, the application is allowed and delay of 37 days in filing the appeal is condoned.

LPA No.79 of 2016(O&M)

This appeal has been filed by the Executive Engineer, Public Health Engineering Division No.2, Yamuna Nagar, challenging order dated 20.10.2015 dismissing the writ petition while upholding award dated 26.02.2015 passed by the Presiding Officer, Labour Court, Ambala in favour of the respondent-workman.

Brief facts of the case are that, the respondent-workman was appointed on 21.07.2009 as a Pump Attendant on monthly basis at Yamuna Nagar, Division No.2 on a consolidated salary of ₹3,500/-. His services were terminated on 21.10.2012 by the appellant. A demand notice under Section 2A of the Industrial Dispute Act, 1947 (hereinafter referred to as the 'Act') was raised by the workman. Ultimately, the dispute was referred to the Tribunal for adjudication as to whether termination of services of the respondent-workman was justified or not.

The respondent-workman asserted that termination of his services was illegal. It was averred that he completed more than 240 days of employment in the preceding twelve months from the date of termination of his services as well as in each year of his employment. The provisions of law were not adhered to while retrenching his services which is a clear violation of the provisions of Section 25G and H of the Act. Furthermore, the nature of work in which the workman was engaged was not intermittent but was perennial. The workman, thus, prayed for reinstatement with continuity and full back wages.

The claim set up by the workman was resisted by the management

while relying on the terms and conditions of the engagement letter dated 21.07.2009 of the workman as well as unsatisfactory nature of the work done by him. However, the Labour Court while not finding any merit in the plea of the management, allowed the reference. The workman's claim was not accepted on account of breach of procedure and rights protected under Section 25G and 25H of the Act but due to breach of Section 25F of the Act as reflected in the facts and circumstances of the case. The management was directed to reinstate the respondent-workman with continuity of service but without back wages.

The management preferred CWP No.18635 of 2015 challenging the award dated 26.02.2015 which was dismissed vide impugned order dated 20.10.2015. The learned Single Bench held that the view taken by the Labour Court on facts, after appreciating the evidence, is plausible and possible therefore, it would not re-appreciate the evidence to come to a different conclusion as if sitting in appeal and the award did not suffer from any fundamental flaw or an error apparent on the face of it.

Learned counsel for the appellant argues that as per Condition No.4 of engagement letter dated 21.07.2009 issued to the respondent-workman, his services can be terminated at any time without any notice, and an affidavit to this effect was submitted by the respondent-workman. Once there is a specific contract between the management and the workman, it is to be strictly adhered to. Furthermore, once the appellant was ready to pay the compensation to respondent-workman, reinstatement of the workman should not have been ordered and the ends of justice would be met with award of monetary

compensation to the workman. It is argued that even if termination is found to be illegal, reinstatement of the workman is not automatic. This principle is not to be applied mechanically, especially where the ends of justice can be secured through monetary compensation. It is, thus, prayed that order dated 20.10.2015 and award dated 26.02.2015 be set aside.

We have heard learned counsel for the appellant and gone through the file.

The engagement letter dated 21.07.2009 mentions the workman to be engaged on 'term appointment' on monthly basis as Pump Attendant/ Chowkidar/Mali-Chowkidar/Keyman/Beldar at a consolidated remuneration of ₹3,510/- per month. It is proved on record that the workman worked for more than 240 days in the twelve months preceding his termination and each year of his employment. Mw3 Jeet Ram as well as Mw1 Mr. Sumit, Sub Divisional Engineer, Public Health Engineering, Sub Division No.2, Yamuna Nagar have admitted this fact. Mw1 Sumit admits that there was no complaint against the workman for the period he worked with the management. It has not been denied at any stage by the appellant that provisions of Section 25F of the Act were not complied with at the time of termination of respondent-workman's services. Notice was never issued to the respondent-workman, neither were wages in lieu of notice or retrenchment compensation paid at the time of termination of his services. It has rightly been held by the learned Single Judge that the mandatory provisions of Sub Sections (a) and (b) of Section 25F of the Act, cannot be circumvented in this manner. Condition No.4 of the engagement letter cannot override the statute and reliance on such provision

does not justify the action of the management.

The argument of learned counsel for the appellant that even if the termination of the respondent-workman's services is found illegal, reinstatement should not be directed, is not acceptable in the facts and circumstances of the case. It is a settled position that ordinarily, if termination is found to be illegal, the workman should be reinstated. In the instant case, back wages have not been awarded to the workman. The respondent-workman had been working with the management from 21.07.2009 till the termination of his services on 21.10.2012 without any complaint against his work or conduct. The demand notice was immediately served by the workman, consequent to termination of his services, without any delay. Lack of availability of work for which the workman was engaged in 2009 is neither pleaded nor pointed out. The direction to reinstate the workman without back wages cannot be faulted.

Learned counsel for the appellant is unable to point out any infirmity or illegality, which warrants interference by this Court.

This appeal is accordingly dismissed.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

January 22 , 2016.
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