

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16769-2002 (O&M)

Date of Decision:-09.11.2017.

State of Haryana

.....Petitioner

Versus

Sukhbir Singh and another

.....Respondents

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

Present: Mr. G.S. Wasu, Additional A.G. Haryana.

Mr. R.S. Narang, Advocate for respondent No.1.

P.B. BAJANTHRI, J. (Oral)

CM-8567-CWP-2013

Permission to file photocopies of Annexure R-4 and R-5 and exemption from filing certified copies of Annexures R-4 to R-6 is granted.

CM stands allowed.

CM-8568-CWP-2013

CM for disposal of the writ petition in the light of judgment passed in CWP No.310 of 2003 “*State of Haryana Vs. Savitri Devi*” decided on 27.4.2004 is allowed subject to all just exceptions for the reasons stated in the application as well as affidavit.

With the consent of counsel for the parties, main matter is taken on Board for final disposal.

CWP-16769-2002

In the instant writ petition, petitioner has challenged the award passed by the Labour Court dated 25.2.2002 (Annexure P-6).

Respondent-workman is stated to have been appointed as a

Taxation Peon on contract basis for the period of 89 days from 1.3.1993 and it was extended from time to time on the same terms and conditions. Thus, respondent-workman worked up to 19.11.1998. Respondent-workman raised an industrial dispute. Dispute was decided by the Labour Court on 25.02.2002 while holding that respondent-workman is entitled to reinstatement on his previous post with continuity of service and full back wages from the date of demand notice i.e. 16.03.1999 onwards. Hence, the present petition in challenging the Labour Court award.

Learned counsel for the petitioner vehemently submitted that having regard to the nature of appointment of the respondent-workman to the extent that appointment is on contract basis for a period of 89 days, therefore, respondent-workman herein do not fall under the definition of “workman” with reference to definition of “retrenchment” under Section 2 (oo) read with Section 2 (bb) of the Industrial Disputes Act, 1947 (for short ‘the 1947 Act’). It was further contended that respondent-workman relies on the earlier decisions passed by Labour Court read with the decision of this Court in the case of State of Haryana Vs. Savitri Devi (Annexure R-6). The same is distinguishable since neither the Labour Court nor this Court or Supreme Court while deciding Savitri Devi's case cited supra have not taken into consideration statutory provision like Section 2 (oo) and (bb) of the 1947 Act. Therefore, the decision of Savitry Devi cited supra is distinguishable. Accordingly, Labour Court award dated 25.02.2002 (Annexure P-6) is liable to be set aside.

Per contra, learned counsel for the respondent-workman vehemently contended that Savitri Devi as well as respondent-workman's case is identical. Both of them were appointed on contract basis for a period

of 89 days from time to time. This Court in CWP-310-2003 (**State of Haryana Vs. Savitri Devi**) has held that the action of the State in appointing on contract basis for a period of 89 days from time to time amounts to unfair labour practice. That apart, State has implemented decisions of the Court by issuing circulars like Annexure R-5, office order dated 28.2.2012. Therefore, the contention of the petitioner that in the present case Section 2 (oo) and (bb) of the 1947 Act is not attracted and not relevant. Hence, the petition is liable to be rejected.

Heard learned counsel for the parties.

No doubt it is true that petitioners have resorted to unfair labour practice like appointing respondent-workman on contract basis for a period of 89 days and renewed the contractual appointment from time to time i.e. from 1993 to 1998. Even the decision passed in Savitri Devi and similarly situated persons cases are held to be unfair labour practice. At the same time, Labour Court as well as this Court and Supreme Court in the case of Savitri Devi have not considered statutory provision of Section 2 (oo) and (bb) of the Act, 1947. Therefore, it is necessary to consider the statutory provision of Section 2 (oo) and (bb) of the 1947 Act. If the aforesaid statutory provision is taken into consideration, the decision passed in Savitri Devi and other similar cases cited by respondent are not applicable and they are distinguishable. Accordingly it is distinguished. Supreme Court in the case of **Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri (2013) 14 SCC 456** held that if contract appointee completed his tenure in that event there is no violation of Section 25-F, G and H of the I.D. Act, 1947. Para 10 of the judgment reads as under:-

“10. A reference to Sections 2 (oo) and (bb) of the Act would be apposite:

Definitions.--

* * *

(oo) '**retrenchment**' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

* * *

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

Section 2(bb) says that if the termination of the service of workman is as a result of non-renewal of the contract between the employer and the workman on its expiry of such contract being terminated under a stipulation in that behalf contained therein, the same would not constitute retrenchment."

The Supreme Court in the case of **Nair Service Society vs T.**

Beermasthan 2009 (2) SCC 545 in para 48 held as under:-

"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block."

Supreme Court laid down principle that statutory provisions are to be taken into consideration. The petitioner's contention is that in identical case, the State have accepted the award and implemented vide Annexure R-5, therefore, similar benefits are required to be extended to the respondent-workman. If an illegality has been committed by the State or Management, the same cannot be extended to others. In other words, illegality cannot be perpetuated. In view of these facts and circumstances, Labour Court award dated 25.2.2002 (Annexure P-6) is set aside.

Accordingly, Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

November 09, 2017.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.