IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13913 of 2016 (O&M)
Date of Decision: 17.02.2017

Medical Officer and another ... Petitioners

Versus

Girdhari Lal and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Anil Shukla, Advocate,
for the caveator-respondent No.1

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RAJIV NARAIN RAINA, J.

1. This petition was taken up on successive dates with respondent No.1 on caveat but formal order of notice of motion has not been issued so far.

2. Therefore, to remove the technical hitch: Notice of motion is issued to the contesting first respondent. Notice to second respondent-Labour Court is dispensed with. Caveator accepts notice, already has the petition in advance and waives right to file reply. By consent the matter is taken up for final disposal today.

3. The coordinate bench passed the following order on September 15, 2016:-

> *"Present: Mr. Anil Mehta, DAG, Haryana.*
>
> *Mr. Anil Shukla, Advocate for caveator/respondent No.2.*
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> ****
>
> *Learned counsel for the appellants submitted that respondent-workman was working as a Peon under the*

Central Government Scheme and the Scheme is for a limited period and the same is no more existing. Consequently, the respondent-workman is not entitled for the relief sought before the Labour Court. He is directed to place on record introduction of scheme as well as termination of the scheme in the next date of hearing.

List this matter on 7.11.2016."

4. On November 07, 2016 the following order was passed:-

"Present: Mr. Anil Mehta, DAG, Haryana.
None for caveator/respondent No.2.

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Order dated 15.09.2016 has not been complied.

Finally list this matter on 08.12.2016 to comply order dated 15.9.2016 failing which petitioners are liable to pay cost of Rs.10,000/-."

5. After hearing the learned counsel, with great respect, it is not found essential to the determination of the case for the State "to place on record introduction of scheme as well as termination of the scheme" because this defence was not taken by the petitioner department before the labour court in the written statement which can be perused at Annex P-2 Pp. 28-31 of the paper-book. The legal position is settled that a new plea is impermissible to be taken and introduced for the first time in writ jurisdiction while reviewing awards of Industrial Tribunals which requires evidence and proof and is not a pure question of law which can be raised at any time when goes to the root of jurisdiction. But not the decision of which would necessitate a further enquiry into the material questions of fact which cannot be allowed to be raised for the first time in writ proceedings. See, for example the position in labour law: cf. <u>Harjinder Singh v. Punjab State Warehousing Corporation & another</u>, (2010) 3 SCC 192; the Supreme Court

observing therein as follows:-

> *"the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and overturn an otherwise well reasoned award passed by the Labour Court and deprive the appellant of what may be the only source of his own sustenance and that of his family."*

6. The facts of the case run like this. The respondent was appointed as a Peon to serve in the office of the Medical Officer, Primary Health Centre, Fatehpur Billoch on contractual basis at DC rates. Approval for the post was sanctioned by the Civil Surgeon, Faridabad on September 13, 2010 though the appointment was for a period of 89 days but it was continued till the services of the respondent-workman were arbitrarily terminated on October 08, 2012. The workman raised a dispute with the management which could not be resolved in-house. Conciliation proceedings led to submission of failure report as they were unsuccessful in bringing about a rapprochement between the disputing parties, which led to reference before the Labour Court at Faridabad to adjudicate the dispute as to whether the termination was legal and justified and, if not, what relief would the workman be entitled to.

7. On notice from the Labour Court, the respondent Health Department put in appearance and filed its statement relying on three documents in its favour to deny relief to the workman. These three documents; the first of which is an office order issued by the Civil Surgeon, Faridabad on September 13, 2010 granting permission to the Senior Medical Officer, CHC, Kurali to appoint a Class IV employee and a Sweeper for 89 days at DC rates w.e.f. September 08, 2010 for smooth running of the

Health Centre. The names of candidates were sponsored by the Sarpanch, Gram Panchayat, Fatehpur Billoch.

8. The second document is a letter dated August 24, 2012 issued by the Mission Director, LR National Rural Health Mission, Haryana addressed to the Civil Surgeon, Faridabad granting sanction to extend the contract of three incumbents who have already worked or are working in PHC Fatehpur Village Billoch and regular posting against sanctioned posts. However, it was stipulated that no further extension will be allowed after September 30, 2012 out of User Fee. The Civil Surgeon was advised to follow policy of Government of Haryana as contained in its letter dated February 16, 2009, copy of which is enclosed regarding engaging/outsourcing of services on these posts.

9. The third document is a crucial Memo/letter dated December 4, 2007 which apparently is in favour of the case of respondent-workman. This letter has been issued by the Commissioner & Secretary to Government of Haryana, Health Department to The Director General, Health Services, Haryana on the subject of up-gradation of Sub Health Centre, Fatehpur Billoch (Faridabad) to Primary Health Centre. Not only had the Sub Health Centre being upgraded by this Memo but seven posts were created, one of which was of Peon, to which post the caveator respondent was appointed. It is recorded in para.3 of the Memo that the sanction is subject to five conditions, the first of which is that the expenditure will remain within the sanctioned budget provision and will be incurred according to prescribed norms/rules with the approval of the competent authority. Condition (ii) attaches pay scales to these posts and, therefore, it follows that DC rates

would cease to apply. Condition (iii) decided that the scheme will be included in the Annual Plan meaning thereby budgeted expenditure. Condition (iv) was to the effect that the amount under salary item will not be diverted to any other item without the approval of the Government/Finance Department. Lastly, and more importantly, as Mr. Shukla points out appearing for the respondent-workman of the recital therein that the posts of Peon or Sweeper will be on contract basis.

10. Mr. Shukla apprises the Court that the Memo dated December 04, 2007 (P-7) referred to above was not a document produced by the management before the Labour Court. However, since it is a public document and placed for the first time on the record of the present proceedings by an interim direction of this Court calling upon the petitioner to disclose on record facts as to the introduction and termination of the scheme in the National Rural Health Mission. That is how this document has found its way on record of which the writ file which has been taken judicial notice of being a public document produced from proper custody.

11. When the letter dated December 04, 2007 is read it supports the case of the respondent-workman and puts an end to the defence taken by the State before the Labour Court that workman could not be reinstated because the scheme has been changed to outsourcing method of employment. If there is a post of Peon which is duly sanctioned, then affirmation of the impugned award of the Labour Court will only put the workman back to the original position on contract basis and not through outsourcing the job. If there is a sanctioned post then reinstatement is eminently possible if all other jurisdictional facts are reconciled with relief.

12. Apart from the legal and factual position obtaining from the documents as above, I have carefully examined the award with the assistance of the learned counsel. There can be no doubt that the termination was effected without following the mandatory procedure of Section 25-F of the Industrial Disputes Act, 1947 as neither notice, one months' wages in lieu of notice nor retrenchment compensation was paid at the time of termination. The workman had admittedly put in well over 240 days of continuous service in the preceding 12 calendar months of the termination.

13. The Labour Court has set aside the termination as illegal and reinstated the workman to service with continuity from the date of termination with 50% back wages. All statutory benefits flowing out of deemed continuity have also been given by the Labour Court and the impugned award dated February 18, 2016 made by the Presiding Officer, Labour Court-III, Faridabad has been answered against the department with costs of ₹ 5000/-. The Labour Court has exercised its discretion in a fair and reasonable manner by reducing back wages to 50% of the arrears in favour of the State which is substantial modulating of the monetary relief. The new plea raised by the State is rejected.

14. I find no error apparent on the face of the record or any jurisdictional error or capricious exercise of discretion by the Labour Court and would dismiss the petition as devoid of merit. The impugned award is accordingly upheld. Ordered accordingly.

15. At the end of the hearing, the learned law officer suggests politely that since the Court did not specify person to whom costs of ₹ 10,000/- were to be paid or in which institution where they to be deposited,

the amount has been deposited by the department by way of abundant caution with the High Court on February 8, 2017 against Deposit Receipt No 055 Serial No 2355, a photocopy of which is retained on record. Since imposition of costs at interlocutory stage representing public money is not found justified and that too for not the best reason, the amount is directed to be returned to the “Medical Officer I/C Health Centre, Fatehpur”. The plea of return of cost is accepted as fair and just. The Registrar General is requested to facilitate refund of money to the quarters concerned.

(RAJIV NARAIN RAINA)
JUDGE

17.02.2017
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Whether speaking/reasoned *Yes*

Whether reportable *Yes*