

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

CWP No.24267 of 2011 (O&M)

Date of Decision:15.11.2017

Doaba Co-operative Milk Producers Union Limited, Jalandhar

... Petitioner

Vs.

Hardeep Singh and others

... Respondents

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

Present : Mr. D.S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate for the petitioner.
Mr. G.S. Nagra, Advocate for the respondent.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has challenged the award passed by the Labour Court dated 20.09.2011 (Annexure P-5).

Petitioner issued employment notice for various posts in the petitioner's society. One of the post advertised is Diary Assistant on contract basis on 25.02.1998. Respondent-workman was candidate for the post of Diary Assistant on contract basis. He was selected and appointed. Conditions in both employment notice as well as order of appointment are crystal clear to the extent that it was contract appointment and it is for a period of one year and it is extendable for a period of two years. Contract appointment of the respondent-workman was extended for a period of six months from 18.11.1998 and thereafter as and when contract period was completed further extension of three months was granted on 17.11.2000. His services were relieved on 17.02.2001 as and when three months of service was completed from the date of extension.

Respondent-workman feeling aggrieved by the order of

relieving dated 17.2.2001 raised industrial dispute. Industrial tribunal decided the respondent's dispute in his favour on 20.9.2011. Hence, the present petition by the management-petitioner.

Learned counsel for the petitioner submitted that industrial dispute raised by respondent-workman is not maintainable in view of Section 2(o) (bb) of ID Act as his appointment is on contract basis as is evident from employment notice (Annexure P-1) read with order of appointment dated 14.11.1998. It was further submitted that Labour Court exceeded its jurisdiction in directing petitioner to consider name of respondent-workman for regular vacancy with reference to the affidavit of the General Manager of the management and further order of continuity of service and 25% back wages. It was also submitted that when respondent-workman appointment is tenure and contract appointment, therefore, question of seeking adjustment against regular vacancy is not available to the respondent.

Per contra, learned counsel for the respondent submitted that while issuing order of appointment in respect of other benefits, it was assured that on successful completion of period of contract appointment, contract appointment can be considered for regular appointment of Diary Assistant. Therefore, when the respondent has completed two years of service, he is entitled to be accommodated against regular vacancy with reference to the condition imposed in the order of appointment. It was further submitted that while ordering of notice of motion, respondent was directed to be reinstated with certain conditions. Accordingly, he has been reinstated by the petitioner. Thus, from 2011, he is working. At this stage, it is not appropriate to displace and he be accommodated against one of the

regular vacancy.

Heard learned counsel for the parties.

Undisputed facts are that respondent-workman was appointed on contract basis as is evident from employment notice read with order of appointment. Merely mentioning one of the condition that as and when contract appointment is completed name of such contract appointee would be considered against regular vacancy that does not give any right to the respondent-workman for the reasons that petitioner is a public institution. They are governed by Article 14 and 16 of the Constitution for the purpose of filling any post in the Society. In other words, contract appointment cannot be converted into regular appointment. Further if such mode is adopted by the petitioner, in that event, it is in violation of Article 14 and 16 of the Constitution. Therefore, Labour Court has erred in directing the petitioner to consider workman's name for regular vacancy and further extending the benefit of continuity of service with 25% back wages may not arise even on the ground of maintainability of dispute having regard to the nature of appointment of the respondent-workman to the extent that it is a contract and tenure appointment.

Accordingly, award dated 20.9.2011 (Annexure P-5) passed by the Labour Court is set aside and in view of the order passed in CWP No.24481 of 2013, civil writ petition stands allowed. Allowing of the writ petition may not come in the way to continue respondent-workman on contract basis in accordance with law and if such procedure is still existing with the petitioner's society.

15.11.2017

rajeev

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(P.B. Bajanthri)

Judge