

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-415-2016 (O&M)

Date of Decision:-11.10.2017.

The Executive Engineer, Sampla Water Services Division, Rohtak

.....Petitioner

Versus

Krishan Kumar and another

.....Respondents

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

Present: Mr. Gagandeep Singh Wasu, Additional A.G. Haryana.

Mr. Sandeep Singal, Advocate for respondent No.1.

None for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

Petitioners have challenged the validity of the award passed by the Labour Court dated 8.5.2015 (Annexure P-1).

Respondent-workman is stated to have been engaged as a Beldar in the petitioner's Department on 22.8.1988. From 16.12.1999 to 18.11.2008 petitioner remained unauthorized absent without making necessary leave application or leave was sanction during the absence period. Consequently, the petitioners terminated the services of respondent-workman on 19.12.2008. Respondent-workman raised an industrial dispute. Labour Court passed an award in favour of the respondent-workman for reinstatement with continuity of service and without back wages. The petitioner-Department aggrieved by the award passed by the Labour Court

dated 8.5.2015 presented this petition.

Learned counsel for petitioner submitted that Labour Court has erred in stating that termination is in violation of Article 311 of the Constitution. Further no notice has been given to the respondent-workman. It was submitted that respondent-workman was appointed on *ad hoc* basis. Question of invoking Article 311 of the Constitution or a show cause notice for remaining absent for 9 years need not be given. That apart Article 311 of the Constitution is attracted only in respect of regular holder of the post in the Department and not temporary employee like the respondent-workman. Therefore, Labour Court erred in directing the petitioner to reinstate the respondent-workman with continuity of service.

Per contra learned counsel for the respondent-workman submitted that for remaining unauthorized absent from 16.12.1999, the respondents have condoned the absence if necessary application is made as leave without pay. The same has been taken note by the Labour Court. That apart, the petitioners have not complied issuance of show cause notice and further action by holding an inquiry for unauthorized absence from 16.12.1999. Therefore, there is no error in the award.

Heard learned counsel for the parties.

Crux of the matter in the present petition is that the respondent-workman remained unauthorized absent from 16.12.1999 without there being an application or sanction of leave. Therefore, there is no infirmity in the order of termination dated 19.12.2008. Respondent-workman being an *ad hoc* employee, Article 311 of the Constitution is not at all attracted. Thus, Labour Court has committed error in relying on Article 311 of the Constitution. That apart respondent being temporary workman remained

absented for years together. Therefore, his conduct is unbecoming of a good employee. As such, he is not entitled to any relief. Accordingly, Labour Court award dated 08.05.2015 (Annexure P-1) is set aside.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

October 11, 2017.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.