

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

Date of decision: 23.03.2017

**CM No.7628 of 2016 in/and
CWP No.8638 of 2013 (O&M)**

The District Ayurvedic Officer, Karnal

...Petitioner

Vs.

Ram Ratti & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Girdhar, AAG, Haryana, for the petitioner.

Mr. Rakesh Kumar, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J.

CM No.7628 of 2016

Notice of the application to the non-applicant/petitioner.

On the asking of the Court, Mr. Saurabh Girdhar, AAG, Haryana, accepts notice.

Having heard learned counsel for the parties, the application for early hearing is allowed and the main writ petition is taken up on Board for final disposal today itself.

CWP No.8638 of 2013 (O&M)

The first respondent was engaged on part-time basis as Water Carrier by appointment letter dated 05.07.2000 on a monthly salary of ₹1552/-, which is less than the minimum wages fixed by the Haryana Government for such type of workers. She was appointed to serve in the Government Ayurvedic Dispensary, Sheikhpura Manchuri, Tehsil Assandh, Karnal. Her services were terminated by a resolution passed by the Gram Panchayat, Sheikhpura on 29.05.2006, on account of “many complaints”

against her work and conduct. A fact finding enquiry was conducted where the allegations were found to be true and accordingly the termination followed simpliciter without warnings, prior notice, charge-sheet, regular enquiry or payment of retrenchment compensation. There was clearly violation of an important facet of natural justice and the law.

Earlier in time, a show cause notice was issued to the workman on 18.10.2002 threatening to remove her from service. She approached the Court of Civil Judge (Senior Division), Karnal against the show cause notice, but the same was withdrawn on a statement made by the Authorities that they were not removing the plaintiff (workman) from service and they would take no further steps in the direction. Accordingly, the suit was withdrawn. She continued to serve for 4 years till she was arbitrarily removed in 2006, as explained above. It is against the termination in 2006 that a dispute was raised and referred to the Labour Court, Panipat for determination.

On notice to the employer, they entered appearance and filed their written statement contesting the reference, inter alia, on the grounds that the 'Dispensary' does not fall within the definition of 'Industry'; the worker was engaged only on part-time basis as Water Carrier on fixed wages; the services were terminated as per terms & conditions of the appointment letter; that her work and conduct was not satisfactory and many complaints regarding her conduct were received by the Department which upon a preliminary enquiry were found to be correct and, therefore, she was not entitled to any relief and the reference deserved to be dismissed.

A replication was filed and on completion of pleadings six issues were struck by the Labour Court for determination. Evidence was led in support of the respective claims and counter-claims. The complaints

which were not put to the worker were produced on record as Mark-1 to Mark-25 and therefore, did not constitute legal evidence by mode of proof and weight. The Labour Court held correctly that a part-time employee fell in the definition of Section 2(s) of the Industrial Disputes Act, 1947 (for short 'the Act'); her service was continuous and uninterrupted and the test of completion of 240 days prior to termination was satisfied on record. The Labour Court applied the law in Divisional Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam, AIR 2009 Supreme Court 309 to hold that a 'part-time worker' will be a 'workman' and thus entitled to retrenchment compensation as provided by Section 25-F of the Act and her termination without payment of retrenchment compensation at the time of termination will be illegal and void. The Act makes no distinction between a full-time and a part-time employee.

The Labour Court considered the evidence available and held, and quite rightly, in the award that the termination order was passed merely on the basis of a preliminary enquiry held in which she was not associated nor had any list of witnesses or the documents used against her supplied to her nor were the foundational complaints put to her for rebuttal and an opportunity of personal hearing was denied in breach of the principles of natural justice. The Labour Court concluded correctly that in these circumstances it cannot be said that a regular domestic enquiry was conducted which could alone have constituted valid reason for termination if the charges were proved upon the evidence.

MW-1 admitted in cross-examination that no charge-sheet was served on her. An enquiry can begin only with a charge-sheet and in no other manner known to law. The preliminary enquiry had no legal value in the eyes of law when it was acted upon adverse to the respondent. If the case

did not fall in the purview of disciplinary action, then the Management was confronted immediately by operation of the law of procedural safeguards in the Act that afford to the weak against arbitrary termination, the rights protected by virtuous compliances of Section 25-F of the Act, which was missing in the case. The provisions of Section 25-F of the Act are mandatory and non-compliance thereof renders the retrenchment of an employee a nullity. The Labour Court applied the law in Anoop Sharma Vs. Executive Engineer, Public Health, Division No.1, Panipat, 2010 (3) SCT 318, to reach the conclusion that there was everything wrong in the termination, which was caused by underlying charges of misconduct. The motive was impulsive and without due thought paid at the time of termination. If retrenchment compensation was not paid and the procedure in Section 25-F of the Act was not followed, then action may attract reinstatement and that too with full back wages, continuity of service and consequential benefits. Resultantly, Issues No.1 & 3 regarding justification of termination and whether work person fell within the definition of Section 2(s) of the Act were decided in her favour and against the Management. Issues No.2, 4 & 5 were not pressed or argued by any of the parties and, therefore, there was no question for the Labour Court embarking on a discussion thereon.

On these premises, the Labour Court has allowed the reference and awarded reinstatement with continuity of service, but has restricted the back wages to 25% of the arrears from the date of demand notice i.e. 05.10.2006 vide impugned award dated 11.09.2012. I have no reason to differ with the findings recorded since there is no error apparent on the face of record nor is there any perversity or irrationality in the findings recorded.

However, the petitioner has argued before me that reinstatement is not automatic and many factors come into play before the Labour Court

awards reinstatement, such as, mode of appointment, availability of vacancies, need for work, length of service, whether worker was regular or temporary or part time, the strict demands of Articles 14 & 16 of the Constitution for a public employment etc. and these factors have not been considered by the Labour Court, when it is settled that reinstatement is not automatic or a mechanical result of breach of Section 25-F of the Act. In a case of termination on the ground of misconduct, when enquiry was not held and neither is workman, full time or part time, associated in such enquiry to enable resistance to the charges and opportunity to prove his/her innocence and on failure of the defence stand, then reinstatement should follow as a possible consequence. This is the discretion exercised by the Labour Court and when it is judicious then there is hardly any justification to interfere by substituting one view over the other which is not the scope of writ jurisdiction against findings recorded after appreciating the evidence.

I find nothing unlawful with the Labour Court awarding reinstatement for good and sufficient reasons.

The other and more important issue raised by the petitioner is that in case of a temporary employee, it is well settled that there are two options available for the employer before terminating the services of a temporary employee. One option is to hold enquiry and then terminate the services of the temporary employee, while the other option would be to pass a termination order simplicitor, as it is not mandatory in the case of a temporary/part time employee/workman to hold enquiry before terminating his/her services. Therefore, for the sake of argument, even if it is presumed that the enquiry was not fair and proper since obviously it was not held, even then the termination of the respondent cannot be held to be illegal without considering the aspect that the Labour Court itself should have conducted

the enquiry by giving an opportunity to the Management to defend its action on the basis of misconduct imputed against the workman for the first time before the Labour Court.

This argument would have gelled if a request had been made to the Labour Court to permit the employer to prove the charges for the first time before the Labour Court. I, therefore, asked the learned counsel representing the State to show me an application or an averment in the pleadings including in the written statement/statement of claim of the management; whether any such request had been made to the Labour Court. The answer was in the negative. The reply to the claim statement placed at Annex P-3 from Pp.57 – 63 reveals that no such request was made. This power under Section 11-A of the Act is not to be invoked *suo motu* by the Labour Court since it is settled in law to be a request jurisdiction. If request was not made at any time during the proceedings, the Labour Court was not duty bound to invoke its power to hold the enquiry itself and start a roving enquiry into the allegations of misconduct spread over a period of time. The argument though was attractive but on query put, fails to persuade me to still interfere and remand the case. It is, therefore, rejected and accordingly for the reasons stated above, the petition is ordered to stand dismissed, as no other point was pressed for consideration.

23.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>