

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

CWP No.318 of 2017
Date of decision: 06.04.2017

Government Girls Senior Secondary School,
Rayya District Amritsar

.... Petitioner

VS

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. The learned counsel has chosen not to appear. It is also rather off-beat for a Govt. School to be represented by private counsel which normally should be represented in seek judicial review of the impugned work of the Labour Court by the office of the Advocate General, Punjab. This is what has created a reasonable doubt in the mind of the Court as to locus of petitioner and its bona fides to lay challenge privately on behalf of the State to the impugned award/order. This is not sufficient to dispel doubt as to who the employer is, the School or the committee of the Parent Teacher Association. Is it the State Government or the private body of parents of the school children paying wages to support employment of the respondent chowkidar. The employment was for a long time and thus the workman acquired industrial rights.

2. Hence, when the matter came up for hearing on the first date, a query was put to the learned counsel for the petitioner to explain status of PTA funds on which he took time for filing additional affidavit explaining

the status of the Parent Teacher Association Funds (PTA) in the petitioning school duly audited for the last five years, with proof of footing the salary of the award-holder-workman to understand his case toward relief as granted by the Tribunal. The query was addressed as to whether the Government or the parents paid or contributed wages to support employment and thus whose employee the worker was, meaning thereby, in the main, to establish the nexus of employer-employee relationship to satisfy the tests of Section 2 (s) of the Industrial Disputes Act, 1947.

3. The needful was not done by the given date or the next and ultimately on 09.03.2017, learned counsel for the petitioner threw his hands up stating that it is not possible for his client [the Govt. Girls Sr. Secondary School, Rayya, Amritsar] to file the proposed additional affidavit sought by Court and produce the duly audited accounts of PTA Funds for the relevant five years to examine if the case can be taken forward by summoning the respondent workman and burden him with expense of litigation. He was asked then to place any other material on record including instructions, if any, by the District Education Officer during the relevant period to promote his case and on failure to do so the case was adjourned for today.

4. No one appears for the petitioner despite notice and listing in urgents in the daily cause list. No adjournment is sought. I have no reason to mechanically adjourn the case in the “interest of justice”, the mantra resorted to by the tendency to defer hearing to a postponed date only to await appearance of counsel. If party moving Court does not answer directly a Court query and ducks under the radar of judicial surveillance, then the

petition has to be shot down as an intruder justice-seeker, provided the query was the heart of the matter on which the case turns. I believed there was such a compulsion.

5. Having regard to the order passed by the Presiding Officer, Tribunal/Labour Court, Amritsar on 03.10.2016 dismissing the application filed by the respondent under Section 33C (2) of the Industrial Disputes Act, 1947 by returning a finding on the evidence adduced by the parties on file holding that the claimant was not appointed by the Government School to work as a Chowkidar in the petitioner school, but was engaged by the PTA Committee and he was paid wages from the funds collected from the PTA, which is a private body under no obligation under regulatory laws which may compel employer to act in a particular manner as indicated by statutory enactment.

6. Therefore, the claim made against the school by the workman complaining less payment of salary as against the minimum wages fixed for category post for the period 01.02.2008 to 30.06.2013 [covering 5 years of silence even when there is no limitation provided in the Act] cannot be recognised or approved as a pre-existing right capable of being computed in terms of money due under Section 33 C (2) of the Act. This prayer was rightly turned down in execution proceedings. The claim for stepping up wages was not maintainable as fresh right could not be created within the limitations in Section 33 C (2). The order dismissing the claim application is thus legally valid and deserves to be upheld.

7. This is the first leg of the litigation. But there is more to the case as adverted to hereafter.

8. Further litigation resulting in an award passed by the same Court in Reference No.R-72 of 2014 decided on 03.10.2016, where the dispute was regarding termination of service of the respondent requires to be adverted as against the previous case between the same parties to understand the second limb of the case to answer whether the labour court should have set aside the termination order as illegal.

9. It may be noticed that the orders under Section 33C(2) and the award under Section 2-A read with Section 10(1)(c) of the Industrial Disputes Act, 1947 were pronounced on the same day.

10. While the labour court application [LCA u/s 33 C (2)] was dismissed for good and sufficient reason, the reference [under S. 10 (1) (c)] succeeded by a favourable award for the simple reason that employment relationship was established on the materials on record, disregarding as to from whom the money came to be paid for the next four years continuously in the school although paid out of from fluctuating fortunes in PTA kitty. It was the undisputed position before the labour Court that the petitioner had completed 7 years of employment in the school as Night Watchman/ Chowkidar by the time of disengagement which led to the dispute referred for determination of the *lis*. The labour Court held there was omission to honour the steps prescribed in Section 25-F of the ID Act.

11. The labour Court has upon a consideration of the evidence declared the termination illegal and null and void for valid reasons which

are far from the fringes of irrelevant considerations while making the impugned award. I would readily support the findings arrived at in law and fact in the award.

12. In labour law, for the purpose of granting relief of reinstatement, which although cannot be automatically granted, it is not really material from where the wages come, either from Government or from PTA funds while considering cases of disobedience of the mandatory provisions contained in Sections 25F, 25G and 25H of the ID Act. This is irrespective of the source from where the wages/salary is paid to support employment so long as the work performed is uninterrupted and continuous in the Government School, the petitioner, as per Section 25B and which is fundamentally connected with the industrial activity. The State being the principal employer while the workman served the institution on a post or work of trust to protect public property and in charge of PTA funds maintained by the Principal and staff of the school was required to comply with the provisions of Section 25F(a) of the Act from either source. The PTA was also bound to have ensured compliances of the law when conscious of the mandatory obligation.

13. Section 25-F does not commend to such a fine distinction between source of money which may have been good in a claim application under the Section 33C(2) for refusal to determine money due, but not when the same labour Court was called upon to consider the case sitting in jurisdiction under Section 2A read with 10 (1) (c) of the ID Act to answer whether on the evidence and materials available on record the termination

was fair, proper and justified. To this end, the labour Court correctly applied the law propounded by the Supreme Court in Devinder Singh vs. Municipal Council, Sanaur, (2011) 6 SCC 584 : 2011 (4) SCR 867 and other rulings noticed in para. 8 of the award, to arrive at the fair and just conclusion that reinstatement of respondent-claimant was justified and thereby the reference seeker was appropriately awarded restitution of status with continuity of service but the monetary relief was properly restricted to 50% of the arrears of wages by the learned Tribunal. That makes for substantial relief in favour of the petitioner School when it could have been monetarily saddled with worse financial consequences for breach of law in the ID Act where certain provisions are well known for mandatory compliances and their breach would be illegal. but still may not lead to automatic reinstatement to service. But all the same, relief is open to judicial discretion exercised without any excess of authority and within the scope of powers vested in the Tribunal/Labour Court. When discretion vested in the labour court is properly exercised interference in writ jurisdiction is restricted to the measures explained in classic authority in Syed Yakoob v. K.S.Radhakrishnan case, AIR 1964 SC 477 while judicially reviewing dispute settlement by Tribunals, be they industrial. The Supreme Court dealt with a case arising from the Transport Tribunal but the rule laid down therein is of universal application across the spectrum of Tribunals created by statute.

14. I would, therefore, on the facts established and the proper application of law noticed above and in the award find no palpable error in

the award apparent on the face of record to justify disturbing the findings recorded by the labour court arrived at after appreciating the evidence and other material available on file in the reference and the claim proceedings co-terminus with each other.

15. Accordingly, the present petition fails for want of substance and is hereby dismissed in limine and in absence of the learned counsel for the petitioner failing to appear at the hearing.

(RAJIV NARAIN RAINA)
JUDGE

06.04.2017
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<i>1. Whether speaking/non-speaking?</i>	<i>Yes</i>
<i>2. Whether reportable/non-reportable?</i>	<i>No</i>