IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.115 of 2017 (O&M)
Date of decision : 3.10.2017

Punjab State Warehousing Corporation, Chandigarh

.. Appellant

versus

Presiding Officer Labour Court, Jalandhar and another

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present: Mr. Vikas Singh, Advocate, for the appellant.

Mr. Jagjit Singh, Advocate, for respondent No.2.

Rajesh Bindal, J.

Challenge in the present intra-court appeal is to the order dated 24.12.2014 passed by the learned Single Bench, whereby the appellant was directed to regularize the workman and to pay the arrears of salary and other retiral benefits.

Learned counsel for the appellant submitted that the workman in the present case was appointed on probation on 11.12.1987 for a period of one year. His probation period was extended on 18.6.1989 for a period of six months and further extended for six months on 21.8.1989. Before the expiry of extended probation period, his services were dispensed with on 29.8.1989. The workman raised industrial dispute. Award was passed by the Labour Court against the appellant. Challenging the award of the Labour Court, the appellant filed writ petition in this Court. The writ petition was initially allowed in the absence of counsel for the workman on 6.12.2012.

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However, Review Application filed by the workman was entertained and arguments were re-heard. Learned Single Bench, while appreciating the material available on record, opined that the writ petition deserves to be allowed and the Review Application was dismissed. However, finally relief of regularization of service and arrears of salary and retiral benefits were granted noticing the fact that the workman had been taken back in service and had retired, when the writ petition was taken up for hearing.

Submission is that the wages were paid to the workman under Section 17-B of the Industrial Disputes Act, 1947 (for short, 'the Act'). He was never taken back in service. Hence, there was no question of his being regularised and payment of any amount.

Learned counsel for the workman does not dispute the fact that he was not taken back in service and was being paid wages under Section 17-B of the Act. He relied upon the order dated 27.12.2007 passed by the appellant-corporation, whereby the workman was retired from service on attaining the age of superannuation w.e.f. 31.12.2007.

Stand of learned counsel for the appellant is that an erroneous order passed by the authority, when only wages were being paid to the workman under Section 17-B of the Act, will not confer any right on the workman. He had never been taken back in service. Further submission is that the order passed by the learned Single Bench allowing the writ petition on merit was not impugned by the workman.

Heard learned counsel for the parties and considered the submissions made.

Final directions given by the learned Single Bench are reproduced hereunder:-

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"Considering the observations of the Hon'ble Supreme Court, I am of the view that if a general assessment of the work and conduct of the employee during the period of probation is found to be unsatisfactory and the services of the employee dispensed with in these circumstances it may not be necessary to hold an inquiry by treating the order to be stigmatic. This is an inherent right vested in the employer dictated by the terms of the employment and the purpose of probation. Therefore, petition deserves to be allowed as ordered earlier and the review petition dismissed.

Since the workman was taken back in service under the orders of this Court and was permitted to work till the age of superannuation to draw the benefits of the last pay drawn which fact has been brought to the notice after the aforesaid order was dictated, I am of the view that the instant petition and the controversy had outlived its utility but for some strange reasons this fact was kept away from the Court throughout the proceedings to be revealed after its conclusion. (emphasis supplied)

If the workman has now retired after serving the employer then the very effect of the desirability of the workman to be retained in service pales into considerable insignificance. It is not the case of the Corporation–employer that there were any subsequent complaints. Therefore, dehors the aforesaid observations, the workman would be entitled to all consequential benefits of regularization and arrears of pay

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keeping in view the fact that he had served the Corporation–employer even though under the orders of this Court." (emphasis supplied)

A perusal of the aforesaid order passed by the learned Single Bench shows that on merits writ petition was allowed. However, considering that erroneous fact that workman had been taken back in service and retired during the pendency of the writ petition, it was directed that he be regularised and consequential benefits of regularisation be given. It has been noticed that the fact of workman having been taken back in service and paid wages was brought to the notice of the Court after the order in the writ petition and Review Application had been dictated. The fact that the workman was taken back in service and paid salary after working is found to be incorrect, hence, final direction given by the learned Single Bench after dismissing the writ petition, while moulding the relief, deserves to be set aside.

Ordered accordingly.

The appeal is accepted in terms of the observations made above.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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