

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

201

**CWP-18203-2005 (O&M)
Date of decision:05.04.2018**

Satpal

...Petitioner

Versus

The Haryana Ware-Housing Corporation and another

.... Respondents

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

Present: Mr.R.K.Chauhan, Advocate for the petitioner.

Mr. Vishal Garg, Advocate for respondent No.1.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the award passed by the Labour court dated 08.08.2005 (Annexure P-5).

2. Petitioner is stated to have been appointed as Class IV employee with the respondent-corporation. His services were terminated on 03.06.1981 on the allegations that he remained unauthorized absent while invoking Regulation 12 of Staff Regulation Act while dispensing holding of inquiry. Feeling aggrieved by the order of termination, petitioner raised industrial dispute. Award was passed against the petitioner. Hence the present petition.

3. Learned counsel for the petitioner submitted that petitioner was appointed as Class IV employee on regular basis. Terminating his services on the allegation of misconduct of remaining unauthorized absent without notice and without inquiry would be highly arbitrary and illegal. Such contention has not been apprised by the labour court. Therefore, labour court has erred in passing award against the petitioner. It was also submitted that proviso to Regulation 12 of Staff Regulation Act was subject matter before this court in the case of ***D.N.Sharma versus Haryana Warehousing Corporation*** [1988(6) SLR 144] wherein this court has struck down proviso to Regulation 12 of Staff Regulation Act on 07.10.1988. In view of these facts and circumstances, award passed by the labour court is liable to be set aside.

4. On the other hand, learned counsel for the respondents vehemently contended that as on 03.06.1981 the date on which petitioner services were terminated he was temporary employee and Regulation 12 of Staff Regulation Act, was very much intact. Petitioner has not challenged the validity of proviso to Regulation 12. Thus, there is no infirmity in the award if one reads proviso to Regulation 12 of Staff Regulation Act in striking down of proviso to Regulation 12 on 07.10.1988. Therefore, the said decision may not assist the petitioner for the purpose of extending any benefit like holding inquiry. Therefore, petitioner has not made out a case so as to interfere with the labour court award.

5. Heard learned counsel for the parties.

6. Issue involved in the present petition is whether petitioner is a

regular holder of the post of Peon (Class IV) or not? Further whether proviso to Regulation 12 of Staff Regulation Act, is applicable or not? Perusal of Annexure R1 order of appointment of the petitioner dated 05.05.1977 no doubt it says that temporary appointment. At the same time one cannot lose sight of the condition that petitioner was on probation for a period of one year. Such employees who are on probation would get temporary status till probation is cleared or their confirmation against the post. Therefore, one cannot say that petitioner was temporary employee. Even assuming that proviso to Regulation 12 is taken into consideration that in the case of temporary employee or Class IV employee whose service is terminated without such notice by the terms and conditions of his appointment imposition of such clause would be highly arbitrary and illegal. In other words, having regard to the allegations against the petitioner that he remained unauthorized absent for some time whereby misconduct is attracted. Consequently minimum show cause notice and holding of inquiry is attracted. In view of various decisions of the Supreme Court like ***D.K.Yadav versus J.M.A.Industries Ltd.*** [(1993) 3 SCC 259]. Moreover, during pendency of the present petition, proviso to Regulation 12 of the Staff Regulation Act was struck down in ***D.N.Sharma's*** case cited (supra). Therefore, matter requires for setting aside the order of termination and for holding of inquiry. Since order of termination is relates back to 03.06.1981 and the petitioner is fighting for his grievance even to this day. Therefore, it is not appropriate for remanding the matter to the concerned respondent for holding inquiry in respect of unauthorized

absence in the year 1981. Thus, labour court had not appreciated in respect of arbitrary clause imposed in the Regulation 12 of Staff Regulation Act. Accordingly, labour court award dated 08.08.2005 is set aside. Consequently, petitioner is entitled to all service benefits as if he is in service from the date of termination till attaining age of superannuation.

7. CWP stands allowed.

05.04.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No