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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-11338-2016
Date of Decision : August 24 , 2018

Panchayat Samiti, Phul

.... Petitioner.

Versus

Maninder Singh and others.

.... Respondents.

2. CWP-4163-2017

Maninder Singh

.... Petitioner.

Versus

The Presiding Officer, Industrial Tribunal
Bhatinda and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Tarun Singh, Advocate
for the petitioner in CWP-11338 of 2016.
and for respondents No. 4 and 5 in CWP-4163-2017.

Mr. Ashish Grover, Advocate,
for the petitioner in CWP-4163-2017 and
for respondent No.1 in CWP-11338 of 2016.

Mr. H.S.Sitta, AAG, Punjab,
for State of Punjab.

SHEKHER DHAWAN, J.

Challenge in the above titled two writ petitions under Articles
226/227 of the Constitution of India is to the common award dated 7.7.2015

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(Annexure P/8) passed by learned Industrial Tribunal, Bathinda whereby Maninder Singh, workman herein, was awarded compensation at the rate of Rs.25,000/- for each completed year of service. While CWP-11338-2016 has been filed by the employer-Management challenging the award of compensation, the workman has filed CWP-4163-2017 seeking reinstatement with continuity of service with back wages or in the alternative, to enhance the amount of compensation. Therefore, both these writ petitions are being disposed of by this common judgment.

2. Facts relevant for the purpose of decision of these writ petitions, are being taken from CWP-11338-2016 ; that Maninder Singh (hereinafter referred to as “**the workman**”) was appointed as Driver on 06.01.2004 by Executive Officer, Panchayat Samiti, Phul and he continued to work till 06.07.2007. He was getting wages @ Rs. 2,649/- per month and his services were terminated on 31.07.2007 without issuance of any notice, charge-sheet or holding enquiry. The petitioner raised industrial dispute on the basis of which, reference was made to learned Industrial Tribunal, Bathinda (for short, “**the Tribunal**”).

3. Petitioner-Management had come with the plea that the management- Panchayat Samiti, Phul does not come within the definition of “Industry”) under the Industrial Disputes Act, 1947 (for short “**the Act**”). Plea was also taken by the petitioner-Management that the claimant was engaged on the terms and conditions that his appointment would be purely temporary basis and his services can be dispensed with at any time without any notice. The Management passed Resolution No. 43 that the

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workman would be appointed on daily wages on D.C. rates till the joining of regular employee as the post of Driver was a regular post. Thereafter applications were invited from general public. Since the appointment of the workman was engaged for a specific period, there is no question of issuance of any notice or payment of any retrenchment compensation.

4. Learned State counsel representing the official respondents No. 3 and 4 stated that the State of Punjab is not the employer of the workman and the relationship of employer has been claimed with the Management – Panchayat Samiti, Phul.

5. Learned counsel for respondent No.1, workman herein contended that the workman was working regularly for more than three years and he had also completed 240 days in the last Calendar year. In his initial appointment letter dated 9.1.2004 (Annexure P/1), there was no such term or condition that his appointment was till the joining of a regular Driver or that his appointment was subject to confirmation by resolution of the petitioner-Management.

6. Learned counsel for the workman also contended that the services of the workman were terminated on 31.7.2007 and by that time, no regular appointment was made, but the Management, in order to appoint their favourite candidate, terminated his services and the award was pronounced by learned Tribunal while taking into consideration all these facts, but the learned Tribunal awarded compensation which is just a meager amount, rather the workman was required to be re-instated in service with continuity and back wages or in the alternative, a reasonable

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amount of compensation should have been awarded in favour of the workman.

7. While arguing on these points, learned counsel for the petitioner-Management contended that the appointment of the workman was only on daily wage basis and the same was till joining of regular candidate/driver. This fact has been admitted by Maninder Singh, workman himself in his cross-examination before learned Tribunal, copy of which is available on the file as Annexure P/6. He has also admitted that he was engaged vide Resolution No. 43 dated 10.2.2004 which was available before the learned Industrial Tribunal as Ex. M/1. He has also admitted that he was engaged on daily wages till the joining of regular driver and he was paid daily wages on DC rates. He also admitted that he had not completed 240 days in the calendar year. Similar is the cross examination of WW-2, Jagjit Singh, the other witness examined by the workman, that Maninder Singh was appointed on contract and salary was paid to him as per D.C. Rates. His appointment was on temporary basis till the the joining of a regular driver. It was further contended that thereafter Raj Kumar joined as regular Driver and the workman was relieved. In such a case, the workman was not entitled to seek compensation under Section 25-F of the Act, rather his case would be covered under Section 2(oo)(bb) of the Act. On this point, reliance was placed upon judgments of Hon`ble Supreme Court in **Municipal Corporation, Ludhiana Vs. Ram Pal, 2006-II-LLJ 235** and **S.M. Nilajkar and Ors. Vs. Telecom, District Manager, Karnataka, 2003(2) LLJ 359.**

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8. Having considered the matter in its entirety and looking at the entire record of this case, there is no doubt about certain facts that the workman was appointed as Driver on 06.02.2004 by Executive Officer, Panchayat Samiti, Phul. His appointment order dated 09.01.2004 (Annexure P/1) clearly indicates that he was temporarily employed and he was to be paid wages as per rates approved by the Deputy Commissioner, Bathinda. There was another stipulation in the said letter, Annexure P/1, that the workman can be removed at any time without serving any notice. The said order was issued by Executive Officer, Panchayat Samiti, Phul and there is no role of the State of Punjab, rather the dispute is regarding employment with petitioner-Panchayat Samiti, Phul. The matter was taken up in the meeting of the Panchayat Samiti, Phul on 10.2.2004 and vide Resolution No. 43, it was resolved that appointment of the workman was on D.C. rates and till the Government appoints a regular driver on the said post. So, it was contractual appointment of the workman and his employment was to cease after the joining of regular driver. In this regard, the petitioner himself was examined before the learned Tribunal and in his cross-examination, he has admitted the entire version of the petitioner-Panchayat Samiti, Phul. He has admitted that his appointment was made as per Resolution No. 43 dated 10.2.2004, copy of which is Ex. M/1 on the file. He has also admitted in clear terms that his appointment was on daily wages till the joining of regular driver and he was being paid wages on D.C. rates as a daily wager. He has gone to the extent of admitting that he has not completed 240 days of service in the preceding calendar year. The

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workman examined one witness, namely, Jagjit Singh as MW-2, who had produced the record of Panchayat Samiti, Phul for the period from October, 2004 to July, 2007. In the cross-examination, the said witness has also admitted the entire version of the petitioner- Panchayat Samiti. He had admitted that the workman was appointed on contract and salary was to be paid to him as per D.C. rates out of contingent funds. His appointment was till the joining of regular driver. The said witness has also admitted the fact that Raj Kumar had joined as regular driver and thereafter the workman was relieved.

9. In the light of evidence adduced by the workman himself, there was no reason or basis for the Tribunal to return the finding in favour of the workman and to answer the reference in his favour. The case of the workman was not covered under Section 25-F of the Act, rather his case is covered as per the provisions of Section 2(oo)(bb) of the Act, which reads as under:-

“2. Definitions - In this Act, unless there is anything repugnant in the subject or context,--

(oo). retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a). voluntary retirement of the workman; or

(b). retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

...

(bb). termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein”

10. Such a view was taken by Hon`ble Apex Court in **Ram Pal's case and S.M. Nilajkar's case (supra).**

11. Learned Tribunal has not considered the evidence brought on record, rather recorded findings which are contrary to the record. The evidence adduced by the workman was his self-serving statement. The deposition of the workman and his witness, Jagjit Singh (MW-2) is rather against the workman and is in favour of the petitioner – Panchayat Samiti. Still, learned Tribunal pronounced the award in favour of the workman and ordered payment of compensation. Therefore, the award dated 7.7.2015 (Annexure P/8) passed by learned Tribunal is set-aside.

12. In view of the above, the writ petition filed by Panchayat Samiti, Phul bearing CWP-11338-2016 is allowed and the impugned award is set-aside and CWP-4163-2017 filed by the workman stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 24th , 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes