

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

CWP-15564 of 2016

Date of Decision: Sept. 07, 2018.

Block Education Officer, Gohana and anotherPetitioners.

Versus

Darshana and another ...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Pankaj Mulwani, DAG, Haryana
for the petitioner.

Mr. Ramesh Goyat, Advocate
for respondent No.1.

SHEKHER DHAWAN, J.

Challenge in this writ petition, filed under Articles 226/227 of the Constitution of India, is to the award dated 06.11.2015 (Annexure P/4) passed by learned Industrial Tribunal-cum-Labour Court, Panipat (for short, "**learned Tribunal**") whereby the respondent/work-lady (Smt. Darshana) was held entitled to reinstatement with continuity of service and 50% back wages from the date of demand notice dated 25.05.2011.

2. Facts relevant for the purpose of decision of the present writ petition; Respondent No.1, Smt. Darshana (hereinafter referred to as "**the work-lady**") had worked with the Govt. Primary School, Kotwal, Tehsil Gohana, District Sonapat, petitioner no.2 herein (hereinafter referred to as "**the Management**") from 15.11.1999 to 28.02.2003 and she was drawing

salary at the rate of Rs.5,000/- per month. Her services were terminated without giving any notice or pay in lieu of notice or retrenchment compensation. The work-lady got issued demand notice (Annexure P/1) and on the basis of that, reference was made to learned Tribunal.

3. State of Haryana has filed the present writ petition challenging the findings of learned Tribunal on the ground that the work-lady was not covered under the definition of "workman" as she was appointed to perform the duties of providing water in the school and she was to perform duty only for 1-1/2 hours daily and thereafter, she was free to do any job. She was paid salary as per the rates fixed by the Deputy Commissioner. In support of his argument, reliance was placed on the judgment of a Co-ordinate Bench of this Court in CWP No. 8040 of 2012, **State of Haryana vs. Dulari and another**, decided on 12.08.2013. On 28.02.2003, she had abandoned the job as there was no sanctioned post available in the School and the water arrangement was made available through the villagers. Even the demand notice was issued after 8 years of abandonment of job by the work-lady, but learned Tribunal has not considered all these facts.

4. While arguing this point, learned counsel representing the work-lady contended that learned Tribunal has already considered all these facts that the work-lady was covered under the definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 (for short "**the Act**"). Even the part-time workers are covered under the definition of 'workman'. The only witness examined in the Management evidence admitted during his cross-examination that the work-lady had worked with the Management with effect from 15.11.1999 to 28.02.2003 but thereafter she herself left the job. However, the witness

had admitted that no notice was served on the workman regarding abandonment of duty. Even if the work-lady was absent from duty, still the Management was required to conduct regular domestic enquiry, which has not been done. On this point reliance was placed upon the judgment from Hon`ble Apex Court in **D.K.Yadav Vs. M/s J.M.A. Industries Ltd., 1993 LLR 584** and there is no ground to set-aside the impugned award.

5. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact that the respondent-work-lady worked with the Management from 15.11.1999 to 28.02.2003 and performed her duties to provide water in the school. There is absolutely no material on the file establishing the version of the Management that the work-lady had abandoned the job because even if she was absent from duty, the Management was duty-bound to issue some notice asking her to resume her duties and in that case, regular enquiry was required to be conducted. As there was no regular enquiry conducted in this case, learned Tribunal had rightly come to the conclusion that the plea of abandonment of the job on the part of the work-lady had been taken by the Management just to avoid the liability. Learned Tribunal has rightly placed reliance on the **D.K.Yadav's case (supra)**.

6. As regard to contention raised by learned counsel for the petitioners and reliance having been placed on the judgment of a Co-ordinate Bench of this Court in **Dulari's case (supra)**, similar matter was before Hon`ble Apex Court in **Div. Manager, New India Assurance Co. Ltd. vs. A. Sankaralingam, 2008 (10) SCC 698**, wherein Hon`ble Apex Court held that a part-time worker is covered under the definition of

“workman” under Section 2(s) of the Act.

7. In view of the above, learned Tribunal has rightly decided the reference in favour of respondent No.1, Smt. Darshna. The present writ petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 07, 2018.

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Whether Speaking/reasoned	:	Yes
Whether Reportable	:	Yes