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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8028-2013
Date of Decision : Sept. 25 , 2018

Smt. Attari Devi Petitioner.

Versus

The Nangal Jat Coop. Credit and Service
Societies Ltd and and others.
.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. A.P.Bhandari, Advocate
for the petitioner.

Mr. N.K.Nagar, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari quashing award dated 26.11.2012 (Annexure P/4) passed by Industrial Tribunal-cum-Labour Court-I, Gurgaon (for short, "learned Tribunal"), whereby the reference has been decided against the work-lady.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner raised an industrial dispute on the ground that she had worked with the respondent-Management from 6.2.1997 till 16.10.2006 as Sweeper without any break. Her services were terminated in an illegal

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manner, without issuing any show cause notice or payment of retrenchment compensation.

3. The Management had taken the stand that the petitioner was assigned the job work of sweeping the office only for 10 minutes and in lieu of that, she was paid a sum of Rs.50/- per month. The petitioner was not a regular employee and there was no requirement of compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”).

4. On these facts, learned Tribunal decided the reference against the work-lady on the ground that since she was working on temporary basis and on daily wages, she was being paid Rs.50/- per month and her job being purely temporary in nature.

5. Learned counsel representing the petitioner contended that the reference has been declined by the Tribunal mainly on the ground that the petitioner was not covered under the definition of “workman”, but at the same time, the period of her employment, i.e., from 6.2.1997 to 16.1.2006 is not disputed by the Management. He further submitted that even the part-time worker is also covered under the definition of “workman” as defined under Section 2(s) of the Act.

6. Learned counsel for the respondents contended that learned Tribunal has rightly taken the view that the petitioner is not a workman under Section 2(s) of the Act and her employment was not regular in nature. The award passed by learned Tribunal is liable to be upheld by this Court.

7. Having considered the submissions made by learned counsel

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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 petitioner worked with the Management from 6.2.1997 to 16.1.2006 and learned Tribunal has also not denied that fact on the basis of record having been produced before it. The only controversy involved in this case is, whether the petitioner, who was being paid lump-sum salary @ Rs.50/- per month and was being deputed for office job for a short period, is covered under the definition of Section 2(s) of the Act. Section 2(s) of the Act is extracted below:-

2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person --

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding Ten thousand rupees per mensem or exercises, either

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by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

8. Similar matter was before Hon`ble Apex Court in **Div. Manager, New India Assurance Co. Ltd. vs. A. Sankaralingam, 2008 (10) SCC 698**, and it was held that a part-time worker is covered under the definition of “workman” under Section 2(s) of the Act. The concluding para of the judgment is extracted below:-

“The question as to whether a part-time workman would be covered within the definition in Section 2(s) of the Act and whether he would be entitled to the benefit of continuous service under Section 25-B and the benefit of Section 25-F, is answered in favour of the workman-respondent.”

9. In the light of the above, the findings recorded by learned Tribunal are not justified and the petitioner is certainly entitled to reinstatement with continuity of service and back wages as her employment with the Management is not disputed. However, in the present case since, the petitioner has not worked from January, 2006 onwards with the respondent-Management, it may not be appropriate to order her reinstatement at this stage, rather the petitioner can be compensated by payment of lump sum compensation. A Division Bench of this Court in **Sunil Kumar Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurdaspur and others, LPA No. 2078 of 2014**, decided on 19.11.2015, awarded lump-sum compensation for each completed year of service.

10. In view of the above, the present writ petition is accepted and the impugned award dated 26.11.2012 (Annexure P/4) passed by

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Industrial Tribunal-cum-Labour Court-I, Gurgaon, is set-aside. Resultantly, the petitioner shall be entitled to compensation @ Rs.20,000/- per annum for each completed year of service or part thereof. Respondent-Management shall be liable to make payment of amount of compensation so assessed, within a period of three months from today, failing which the petitioner shall be entitled to interest @ 9% per annum from today.

11. Resultantly, the writ petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

September 25, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes