

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

CWP No. 26500 of 2018 (O&M)

Date of Decision: 15.10.2018

The Chief General Manager, State Bank of India and another
...Petitioners

Vs.

Santosh and another
...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Ms. Madhu Dayal, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J. (Oral)

1. The challenge in this petition is to the award of the learned Central Government Industrial Tribunal, Chandigarh granting relief of reinstatement to service as part-time Sweeper with 50% back wages.

2. In the reference proceedings under Section 10 of the Industrial Disputes Act, 1947 the attendance register was not produced the management of the State Bank of India failed to produce the attendance register to rebut the version of the respondent-workperson that she had worked from 01.05.1988 till 2006 as a part-time Sweeper in the branch office of State Bank of India, Air Force Station, High Grounds Chandigarh. In the absence of production of such vital record, except for the Petty Charge Register which document was not sufficient to conclude in favour of the Bank, the Tribunal drew an adverse inference. Learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court Chandigarh held that the termination was

totally illegal and arbitrary and against the provisions of Industrial Disputes Act, 1947 for want of mandatory compliances.

3. The workman has been reinstated in service with 50% back-wages. It is argued by management that there is no sanctioned post of Sweeper in the Bank and thus there is no place to accommodate the workperson in case the award is maintained. The Labour Court has returned a finding on fact that the termination was in breach of provisions of Section 25-F of the Act. The labour Court has correctly relied on the decisions of the Supreme Court in Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.), Raj Kumar Dixit Vs. Vijay Kumar Guari Shanker (2015) 9 SCC 345, Raj Kumar Vs. Director of Education and others (2016) 6 SCC 541 to conclude that the oral termination was illegal and improper. The nature of the part-time employment is such that sweeping and cleaning operations are an essential function to be discharged at the workplace and when the arrangement had continued for 18 long years there is then a presumption of permanence which cannot be lightly brushed aside.

4. If the argument at the hearing is that the Bank has resorted to outsourcing then it was not the pleaded case before the Labour Court and cannot be raised for the first time in writ proceedings and that too without any factual basis. The Labour Court finding is that even a temporary or part-time employee is treated as a workman and is entitled to the protection provided under the Act. Availability of a sanctioned

post of sweeper is not an essentiality in the working of labour laws in the Industrial Disputes Act, 1947 when the validity of the termination is in question in a setting of many years of labour put in by the respondent.

5. The very fact that if the petty charges register in favour of the petitioner exists then an employer-employee relationship cannot be disputed whatever its nature and character. If an identity card was issued to the respondent it was only to facilitate entry in the restricted area of Air Force Station, High Grounds, Chandigarh. It is not disputed that the identity pass was issued and signed by an officer of the Bank.

6. In view of the findings of fact recorded by the Labour Court on the basis of evidence produced or the lack of it by the Management, no interference is called for. The attendance register now produced in bulk in the petition before this Court is for the first time as it was not produced before the Labour Court and, therefore, this Court is precluded from looking into new material which is not adduced in evidence of the management.

7. At the end of her other submissions, learned counsel for the petitioner argues that the matter be remitted to the Labour Court to look into this material. The State Bank of India had an ample opportunity and the expertise and knowledge and interest guarded by a team of legal experts to have taken appropriate steps to produce the best evidence by which they could succeed. It is not right to remand the case only to

prolong the litigation for years ahead. The argument is accordingly rejected.

8. For what has been said before, and the apparent lack of evidence on record of the labour Court it would not be proper to blindly disbelieve the statement of facts pleaded by the respondent in her support which are duly substantiated by her testimony, the petition I find is only a shot in the dark. I find hardly any cogent reason warranting interference with the impugned award. The award does not suffer from any fundamental flaw or a mistake apparent on the face record. Moreover, the labour Court has suitably moulded the relief by awarding half the back wages even after the Court found on fact that the claimant had not been gainfully employed elsewhere during the pendency of the litigation as there was no evidence or suggestion by management per contra.

9. As a result, the petition is dismissed in *limine* being devoid of merit.

(RAJIV NARAIN RAINA)
JUDGE

15.10.2018

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