

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 7402 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and Another

... Respondent(s)

2. Civil Writ Petition No. 7403 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and Another

... Respondent(s)

3. Civil Writ Petition No. 7404 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and Another

... Respondent(s)

CWP-7402-2016; CWP-7403-2016; CWP-7404-2016 2
CWP-7405-2016; CWP-7406-2016; CWP-7407-2016;
CWP-7408-2016; CWP-7409-2016; AND CWP-7477-2016

4. Civil Writ Petition No. 7405 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and
Another

... Respondent(s)

5. Civil Writ Petition No. 7406 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and
Another

... Respondent(s)

6. Civil Writ Petition No. 7407 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and
Another

... Respondent(s)

CWP-7402-2016; CWP-7403-2016; CWP-7404-2016 3
CWP-7405-2016; CWP-7406-2016; CWP-7407-2016;
CWP-7408-2016; CWP-7409-2016; AND CWP-7477-2016

7. Civil Writ Petition No. 7408 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and
Another

... Respondent(s)

8. Civil Writ Petition No. 7409 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and
Another

... Respondent(s)

AND

9. Civil Writ Petition No. 7477 of 2016

The Managing Director, UHBVNL, Panchkula and Others

... Petitioner(s)

Versus

The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and
Another

... Respondent(s)

Date of Decision: 18.07.2018

**CWP-7402-2016; CWP-7403-2016; CWP-7404-2016
CWP-7405-2016; CWP-7406-2016; CWP-7407-2016;
CWP-7408-2016; CWP-7409-2016; AND CWP-7477-2016**

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CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Jasmeet Singh Bedi and Mr. Rahul Jain, Advocates
for the petitioner(s).

Mr. Robin Singh, Advocate
for respondent No.1.

Shekher Dhawan, J.

This order shall dispose of nine writ petitions i.e. CWP-7402-2016, CWP-7403-2016, CWP-7404-2016, CWP-7405-2016, CWP-7406-2016, CWP-7407-2016, CWP-7408-2016, CWP-7409-2016 & CWP-7477-2016 as common question of law involves therein. For the decision of the these petitions, facts are taken from CWP-7402-2016.

Present writ petition i.e. CWP-7402-2016 is challenge to the impugned award dated 25.02.2015 (Annexure P1), whereby respondent No.2-workman (hereinafter referred to as “the workman”) was held entitled to reinstatement with continuity in service along with 50% back wages from the date of filing of claim statement.

Facts relevant for the purpose of decision of the present case, the workman worked continuously with the petitioners-management (hereinafter referred to as “the management”) as A.L.M. from 15.10.2009 till 30.09.2011. On 01.10.2011, the management terminated his services without any notice or payment of retrenchment compensation in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”). The persons, junior to him, are still continuing with the management; the procedure of “last come-first go” has not been followed and the provisions of Section 25-G & 25-H of the Act have been violated.

appointed on the basis of service agreement on D.C. rates. The service agreement was for a fixed period and automatically ceased on expiry of the terms i.e. before six months or when regular selected candidates were appointed. The workman had not completed 240 days of continuous working within one year. There was no necessity of any notice or compensation to the workman and prayed that the reference be decided against the workman.

On the above facts, the learned Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as “the Tribunal”) pronounced the award in favour of the workman holding that the termination was illegal and the workman was entitled to be reinstated on his previous post with continuity of service and 50% back wages from the date of filing of the claim statement dated 01.02.2012.

Learned counsel, representing the petitioners-management, contended that infact the workmen were working on contract basis and their contractual employment was till 30.11.2016. As such, the workmen were not entitled to any retrenchment compensation as laid down under Section 2(oo)(bb) of the Act. On joining of regular employees, the workmen were relieved. The order indicating all these facts passed by the Executive Engineer of the department could not be produced before the Tribunal, though the same is available with the present petitioners. However, learned counsel fairly conceded that the workmen have already joined duties in 2009 and since then continuously working, but that was in compliance with the Court order. Learned counsel also contended that on this, the workmen are

not entitled to back wages.

While arguing on this point, learned counsel for the workmen contended that no such termination order was available on the file indicating that the appointment of the workmen was contractual and on the expiry of term of contract, their services were terminated. No such document was produced before the learned Tribunal that respondents have been continuously working with the department since 2009 and they are entitled to back wages as ordered by the learned Tribunal. Thus, present writ petition is without any merits and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and on perusal of the record of the case, this Court is of the considered view that there is no ambiguity on the point of law that if the termination of service is on the expiry of contract period, the workmen are not entitled to any retrenchment compensation as laid down under Section 2(oo)(bb) of the Act. For ready reference, Section 2(oo)(bb) of the Act is reproduced hereunder:

“2(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) XXX XXX XXX XXX XXX XXX XXX XXX XXX

(b) XXX XXX XXX XXX XXX XXX XXX XXX XXX

(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”.

However, in the present case, there was no material available on the file before the learned Tribunal to come to such a finding. At this stage, petitioners cannot take this plea that the termination was on expiry of contract or that such an order was passed by the competent authority. At any rate, on this ground, the impugned award pronounced by the learned Tribunal cannot be set aside because there was no material before the learned Tribunal to record such a finding and there is absolutely no illegality in the impugned award on this point. Needless to say, present is a writ petition and not appeal proceedings against the award(s) pronounced by the learned Tribunal.

As regard to joining of service by the workmen, it is not disputed in anyway that the workmen have been doing their job right from the year 2009 in compliance with the Court order and there is no question of setting aside such order(s). However, taking into consideration the fact that the workmen had served the management for a short duration of two & a half years and they have not been able to lay their hands on any such document indicating that their appointment was made on regular basis or their appointment was after adopting the due process. But at any rate, on this account, the workmen are at least not entitled to back wages as awarded by the learned Tribunal.

Similar matter was before the Hon'ble Apex Court in ***Defence Research Education Society & Another v. Neeta Tuteja 2015 (1) S.C.T. 18***, wherein the appellants were ready and willing to reinstate the respondent in service with continuity in service but without back wages. The Hon'ble

Apex Court directed the management to reinstate the workman without back wages but with continuity of service. Applying the same principle of law to the present set of facts, it is directed that the workmen shall be entitled to reinstatement with continuity of service but without back wages. The management shall also give notional increments to the workmen, if they are otherwise entitled to the same as per their service conditions. The impugned award(s) is, thus, modified to this extent and present petitions are allowed in the above terms.

July 18, 2018
“DK”

(Shekher Dhawan)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No