

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 28908 of 2018
Date of Decision: 17.12.2018

Smt. Lali

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court Hisar & another.

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. Balwinder Singh, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The Industrial Tribunal-cum-Labour Court, Hisar has rightly refused to interfere in the reference because the documentary evidence produced by the respondent-management proved that the work of maintaining cleanliness was got done by the department by inviting tenders and the petitioner had herself participated in the same process by giving quotations. In this arrangement of work through tenders there is no direct employer-employee relationship and the dispute between the parties cannot be described as an industrial dispute and, thus, the reference was not maintainable before the Labour Court, as industrial rights were not involved and only contractual or civil rights were for which the Labour Court is not the appropriate forum.

2. Facts of the case are that initially the petitioner was employed as a part time sweeper initially for four hours a day and she worked in that capacity for 19 years. Prior to the petitioner her father-in-law and mother-in-law were also working as sweepers in the same office of the Block Development and Panchayat Officer, Narnaund, Tehsil Hansi, District Hisar. That would hardly make any difference as the dis-engagement finally

was when the tender of the petitioner came to an end. During that period she had ceased to possess actionable industrial rights as she was herself an independent contractor. There was no question of complying with Sections 25-F or 25-H of the Industrial Disputes Act, 1947 (for short 'the Act'). Section 25-F of the Act postulates that an employee-employer relationship must exist for at least 240 days in the preceding 12 calendar months to make a calendar year as per Section 25-B of the Act. Section 25-H of the Act comes into play when workman's service is terminated and thereafter a person is appointed in place of the complaining party.

3. Section 25-H of the Act requires an employer to issue notice to the workman for re-entry into service and to opt whether he or she wishes to rejoin service when vacancy arises. The Labour Court has dealt with these aspects and found that the reference deserves to be answered against the petitioner and in favour of the respondent.

4. There is no legal infirmity, perversity or fundamental flaw found in the award which is apparent on the face of the record. The Labour Court has appreciated the evidence on record and reached the conclusion that the petitioner is not entitled to any relief because she was not on the rolls of the respondent as its employee at the time of the alleged termination. No retrenchment took place. The petitioner lost her tender to third party. It is not for this Court to substitute opinion on the same evidence and come to a different conclusion in judicial review. No ground whatsoever is made out to interfere with the impugned award. The same is affirmed. The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

December 17, 2018
Sunil Devi

Whether speaking/reasoned:
Whether Reportable:

Yes
No