

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.286 of 2016 (O&M) in
CWP No.16590 of 1992
Date of decision: 15.01.2018

Balwinder Masih

.... Appellant

Versus

Block Development and Panchayat Officer & ors.

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. Rajeev Godara, Advocate for the appellant.

Mr. Surinder Sharma, Advocate for
Mr. C.L. Premy, Advocate for respondents No.1 and 2.

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab.

B.S. Walia, J.

1. Intra-court appeal has been filed against the order of the writ court dated 30.07.2014 setting aside award dated 09.02.1992 (Annexure P-6) passed by the Labour Court, Gurdaspur (hereinafter referred to as 'the Labour Court') whereby the appellant had been directed to be reinstated with continuity in service along with full back wages.

2. While noting that undoubtedly the appellant had worked continuously for 240 days in a year before termination of his services the writ court observed that mere working for the requisite number of days would not in itself suffice to attract Section 25 (F) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and that the manner of termination would also be a relevant aspect of the matter to be gone into.

3. In the aforementioned background, the Writ Court while referring to communication dated 19.09.1986 by the Director Rural Development and Panchayat Department, Punjab to the Executive Officer of the Panchayat releasing ₹ 42,24,200/- by way of cash as well as wheat under Rural Landless Employment Guarantee Programme observed that perusal thereof revealed the scheme being a centrally sponsored scheme for execution of work regarding reclamation of banjar and kallar land pertaining to the Executive Panchayat Samiti and that guidelines for implementation of the project had been issued vide Annexure P-1 stipulating that the project would be implemented by the Gram Panchayat under the strict supervision of the Block Development and Panchayat Officers and Engineering Wing of the Department and the concerned Gram Panchayat would be responsible for the maintenance of the said project. The Writ Court also took into account the stand in the writ petition that the Government had withdrawn the scheme of providing saplings of 'safaida' trees in August, 1989 as a result of which work of planting of saplings of 'safaida' trees which were supplied to the Panchayat fell through as a consequence of which the services of the appellant along with other persons who had been employed from time to time as per need on daily wages, were dispensed with. The Writ Court further held that the Labour Court had not taken into account that there was no post of Mali, therefore, the engagement of the appellant for doing agricultural operations such as reclamation of land and development of social forestry by planting 'safaida' saplings unless it was brought out that there was separate cadre of Malis under any of the Rules of Gram Panchayat, it was not possible to accommodate the claim of the workman for treating his termination as retrenchment thereby entitling him to notice and compensation under Section 25-F of the Act. The Writ Court held that in

view of the Labour Court having failed to advert to the defence taken that there existed no post of Mali and the engagement of the Mali was pursuant to the project, order of the Labour Court directing reinstatement was legally unsustainable being covered within the excepted situation of termination under Section 2 (oo) (bb) of the Act.

[4] We have considered the submissions of learned counsel for the appellant who has reiterated the submissions made before the Writ Court. However, we find no merit in the appeal as appointment of the appellant was against the scheme as referred to above. The scheme of providing saplings of 'safaida' trees was withdrawn by the Government in August, 1989, consequently, the work of planting of saplings of 'safaida' trees which were supplied to the Panchayat fell through. There was no post of Mali with respondent Nos.1 and 2 and it not having been established that there was any separate cadre of Malis under any Rules of the Gram Panchayat, no interference is called for with the order of the Writ Court as the case falls squarely with the ambit of Section 2 (oo) (bb) of the Act.

[5] Accordingly, finding no merit in the appeal, the same is dismissed.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

15.01.2018
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Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.