

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

LPA No.929 of 2016 (O&M) in
Civil Writ Petition No.3917 of 2016
Date of Decision: July 17, 2018

The Medical Superintendent-cum-Chairman, Selection Committee, Shri
Guru Teg Bahadur Hospital Group, Amritsar & others

...Appellants

Versus

Hira Singh & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL
HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.Jagmohan Ghumman, DAG, Punjab,
for the appellants in all three appeals.

Mr.B.S.Jaswal, Advocate,
for respondent No.1 in all three appeals.

AMIT RAWAL, J.

Delay applications

For the reasons mentioned in the applications, which are supported by affidavits, delay in filing the appeals is condoned.

C.Ms stand disposed of.

LPA Nos.929, 930 and 931 of 2016

By this order, we shall dispose of Letters Patent Appeals No.929, 930 and 931 of 2016 arising out of adjudication of three writ petitions vide common order dated 26.2.2016 passed by the learned Single Bench, whereby the award of the Presiding Officer, Industrial Tribunal, Amritsar (for short 'the Tribunal') reinstating the workmen with 20% back wages, has been upheld.

Appellant-Medical Superintendent-cum-Chairman, Selection

Committee had assailed the order of the learned Single Bench on the premise that three workmen, vide appointment letter dated 30.6.2010, were appointed on the post of Class-IV on contract basis for 364 days with the Principal, Punjab Govt.Dental College and Hospital, Amritsar. In pursuance to the aforementioned appointment letter, the workmen, vide Annexure P-4, submitted their affidavits to the effect that they shall abide by the terms and conditions of the appointment letter. The Estate Officer, Punjab Govt.Dental College and Hospital intimated the Principal of the said Hospital vide Annexure P-5 that the private respondents-workmen remained absent from their duty nor mended their ways, despite repeated warnings. Their services were terminated after the conclusion of the contract and, thus, workmen could not raise demand alleging non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act). The Tribunal and the learned Single Bench, have erred in not noticing the terms and conditions of the appointment letter. The workmen failed to prove on record that the job was permanent or to be regularized after three years of service and, thus, urged this Court for setting-aside the order under challenge.

Per contra, Mr.B.S.Jaswal, learned counsel representing respondent No.1 in all appeals defended the award of the Tribunal and the order of the learned Single Bench on the premise, that the contents of the appointment letter proved that the provisions of Section 25-F of the Act were blatantly violated as the workmen had put in more than 240 days in a calendar year. The department could not retrench their services against the provisions of the Act. It was proved on record that other posts of Chowkidar were lying vacant and remained unfilled. The conduct of the workmen had

not been proved on record and, therefore, urged for dismissal of the appeals by affirming the order under challenge.

We have heard the learned counsel for the parties, appraised the paper book and are of the view that there is force and merit in the submissions of the learned counsel for the appellants.

As per the appointment letter Annexure P-3, private respondents were appointed on contract basis at the salary of ₹ 3200/- (lump-sum) per month. The relevant lines of the appointment letter and the contents of the affidavit of one of the appellants read as under:-

“As per result on merits Sh.Hira Singh son of Sh.Balkar Singh resident of Village Thadey Post Office Fatahpur Amritsar is being offered with the post of Class-IV Watchman post on contract basis at the salary of Rs.3200/- (lump sum) per month for a period of 364 days at Principal Government Dental College, Amritsar.”

Affidavit

“ I, Hira Singh son of Balkar Singh resident of Village Thadey Tehsil and District Amritsar do hereby solemnly affirm and declare as under:-

1. That I am permanent resident of the above said address.
2. That I am still unmarried.
3. That I am not dismissed from any government or non Government job.
4. That I have not been convicted by any court nor I have been declared accused by any court.
5. That I belong to Mazbi Sikh caste which has been declared as Scheduled caste by the Government of Punjab.
6. That I shall be liable and honest towards the Constitution of India.
7. That I am agree with all conditions mentioned in this letter.”

On perusal of the aforementioned contents, it is evident that the

workmen were appointed on contract basis on lump sum salary of ₹ 3200/- per month. No other benefits were extended to the workmen and, therefore, they could not claim the benefit of provisions of Section 25-F of the Act on expiry of their contract period. Provisions of Section 2 (oo) (bb) of the Act envisage that the termination as a result of the non-renewal of the contract of employment between the employer and the workman after the expiry of the contract cannot be termed as a retrenchment. For the sake of brevity, Clauses (oo) (bb) of Section 2 of the Act read as under:-

“2. **Definitions.-** In this Act, unless there is anything repugnant in the subject or context.-

XXX

XXX

XXX

(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-

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; or”

The aforementioned aspect has not been looked into by the learned Single Bench while affirming the findings of the Tribunal, thus, there is error and illegality.

Vacancy of 13 posts of Chowkidar cannot be a ground for rejecting their claim. Contractual employees cannot be equated with the

permanent employees or a workman, particularly in a situation where their work and conduct has been found to be unsatisfactory.

For the reasons aforementioned, we are of the view that the judgment of the learned Single Bench and as well as the award of the Tribunal cannot be sustained in law and hereby set-aside. Resultantly, Letters Patent Appeals are allowed.

We cannot remain unmindful of the fact that during the pendency of the appeals, this Court vide order dated 24.10.2016, had stayed the operation of the impugned judgment subject to the condition that 25% of the back wages as determined by the Labour Court and affirmed by the learned Single Judge was ordered to be deposited before the Labour Court without prejudice to their rights and the amount so deposited was ordered to be retained in the Executing Court till further orders. The employer is permitted to seek refund of the amount so deposited in pursuance to the order dated 24.10.2016 in accordance with law.

**(RAJESH BINDAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 17, 2018
ramesh**

**Whether speaking/reasoned
Whether Reportable:**

**Yes/No
Yes/No**