

LPA No.1852 of 2017 (O&M) in
CWP No.3963 of 2014

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1852 of 2017 (O&M) in
CWP No.3963 of 2014
Date of Decision : 01.02.2018.

Shiv Dayal.

... Appellant

Versus

Industrial Tribunal, Patiala and another.

.... Respondents

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

Present: Mr. Subhash Kumar, Advocate
for the appellant.

B.S.WALIA, J.

1. Challenge in this intra-court appeal is to order dated 28.08.2017, passed by the learned Writ Court in CWP No.3963 of 2014. Prayer was for setting aside the award of the learned Labour Court and for ordering reinstatement of the appellant with back wages and consequential benefits.
2. Brief facts of the case leading to the filing of the present intra-court appeal are that the appellant was appointed as Helper/Labourer (Establishment) in the Punjab School Education Board, SAS Nagar Mohali (herein after referred to as the Board) and worked there as such from 04.05.1999 to 14.08.2001. Appellant claimed that his services were illegally terminated on 14.8.2001 without any notice, charge-sheet, enquiry or compensation. At the time of his termination, he was drawing ₹1800/- per month. The respondent Board was covered under the Industrial Employment (Standing Orders) Act, 1946. Plea of the appellant

workman before the Industrial Tribunal, Patiala (hereinafter referred to as the Tribunal) was that the respondent had failed to comply with the principles of natural justice, he was unemployed, while his juniors and fresh appointees were still working with the respondent-Board. In the aforementioned background, prayer was for reinstatement with continuity of service and back wages.

3. The Board took up a stand before the Tribunal that the appellant workman was engaged as daily wager labourer on temporary basis on 04.05.1999 to meet the exigency of additional work load and was paid as per D.C rates. On cessation of exigency of additional work load, his services were no longer required w.e.f. 14.08.2001. The Board in its meeting held on 13.07.2004 had decided to regularize the services of workman engaged on contract/daily wage basis, who had completed three years of service and were on rolls as on 23.01.2001. Therefore, the workman was not considered for regularization of service under the above quoted decision of the Board. The workman had remained gainfully employed during the whole period.

4. The Tribunal while rejecting the plea of the Board that it did not fall within the definition of the term 'Industry', on the basis of cross-examination of MW-1-Satish Kumar, held that in view of his admission that the workman had worked w.e.f. 04.05.1999 to 14.08.2001 held that compensation could not be denied to the workman in view of his having completed 240 days service in the year immediately preceding termination of his service. However, the Tribunal did not order reinstatement but merely awarded ₹20,000/- as compensation to the workman to be paid within 45 days of the publication of the award, failing which the same was

ordered to be paid along with interest @ 6% per annum from the date of passing of the award till realization.

5. The appellant/workman challenged the award with a prayer for modifying the same by directing reinstatement with back wages. Learned Writ Court in the background of the petitioner-workman having filed demand notice qua termination dated 14.08.2001 on 20.01.2006, held that reinstatement with continuity of service was not warranted and at best, the petitioner-workman was entitled to enhancement of compensation to ₹75,000/-. Accordingly, award of the learned Labour Court dated 14.11.2013 was modified to the said extent.

6. The workman has come up in appeal challenging the order of the learned Single Judge dated 28.08.2017 enhancing the compensation from ₹20,000/- to ₹75,000/- with a prayer that the same be modified by ordering his reinstatement with full back wages and continuity of service.

7. Learned counsel for the appellant-workman contended that in the absence of termination of the appellant having been ordered on account of violation of Articles 14 and 16 of the Constitution of India and it having been held that he had served for more than 240 days, the award, directing payment of compensation instead of reinstatement with back wages was legally unsustainable.

8. We have considered the submissions made by learned counsel for the appellant-workman. Admittedly, the appellant-workman worked with the respondent as Helper/Labourer from 04.05.1999 to 14.08.2001 for a period of approximately two years. In his cross-examination, he admitted that he had not been appointed through advertisement or employment exchange and further that after termination, he had remained gainfully

employed. Once the appellant workman admitted that he was appointed without advertisement or through the employment exchange, the same cannot be said to be in accordance with Article 14 & 16 of the Constitution of India.

9. Undoubtedly the appellant worked as daily wager for a period of approximately two years. However, the termination took place in the year 2001 i.e. more than 17 years ago. We can also take judicial notice of the fact that with computerization, the need for helpers in the Board has reduced. In the circumstances, we are of the view that the order passed by the learned Writ Court declining reinstatement, while enhancing compensation payable from ₹20,000/- to ₹75,000/-, by taking into account that appellant-workman worked for approximately 2 years on daily wages, beside reference remained pending before the Tribunal for close to 7 years, does not warrant interference.

10. Accordingly, finding that the impugned order passed by the learned writ court does not warrant interference, the appeal is dismissed in limine.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

February 1, 2018

rajesh.k.khurana

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