

LPA-232-2018(O&M)

-1-

Sr.No.129

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

LPA-232-2018(O&M)

Date of Decision: 23.03.2018

Food Corporation of India, District Amritsar.....Appellant

versus

Presiding Officer CGIT and anotherRespondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present Mr.K.K.Gupta, Advocate for the appellant.

MAHESH GROVER, J(ORAL)

This appeal is directed against the judgment of the learned Single Judge dated 14.11.2017 by which the award of the Labour Court in favour of the workman was upheld. Upon a reference claimed by the workman whose services had been discontinued, the Tribunal framed the following issue:-

“ Whether the action of the management of FCI in terminating the services of Sh.Bakshish Singh, Sweeper is legal and justified? If not, to what relief the workman concerned is entitled? ”

It was the specific case of the workman that his services were terminated on 20.09.1997 illegally without payment of retrenchment compensation or a notice. Prior to that the workman had approached this Court seeking regularization of his services which in that petition was disposed of with the direction to the appellant to consider his case.

The appellant took up the stand that the services of the

workman were engaged from the open market by the Transport Contractor on casual basis. They denied his employment under the Food Corporation of India and consequently stated that in the absence of any employment, the question of termination would not arise. In short, the stand was that the services of the workman were through a Contractor. The Labour Court accepted the reference and granted him the following relief:-

“ As regards relief to which the workman is entitled, learned counsel for the workman has requested that as the workman was working against the permanent vacancy, he may be reinstated as daily wager at D.C rates with continuity of service and with full back wages as per D.C rates with continuity of service and silent on the point that he was not gainfully employed during the relevant period. Therefore, the ends of justice will be met if he is allowed 50% of the back wages as he has nowhere pleaded in his case that he remained unemployed and was not gainfully employed during all these years from 20.09.1997. Therefore, the workman is ordered to be reinstated as daily wager in service with 50% back wages at D.C rates till 30.03.2005 with continuity of service. The reference is answered accordingly. Central Govt. be informed.”

Before Writ Court, the appellant raised the same arguments on the line of the written statement filed by them before the Labour Court. Learned Single Judge negated the plea and while commenting on the merits concluded that the appellants failed to establish their plea of the workman's services being engaged through a Contractor which is now the cause of grievance to the appellant to question the judgment of the learned Single Judge by reiterating the grounds urged before Labour Court as well as the learned Single Judge.

It was argued before us that there has been a complete misreading of evidence by the Tribunal and miscarriage of justice because the learned Single Judge did not even advert to the material on record.

We notice that in the award of the Labour Court, there was a specific reference to the statement of the Management witness (MW1) where he denied the engagement of Sweepers through contractor “that Food Corporation of India does not recruit the Sweepers through Contractor”.

This is a complete anti thesis to the stand in the written statement and kills the argument before us.

The learned counsel for the appellant yet vehemently argued that such a statement was never made by the witness.

We have perused the material on record and particularly the statement which finds reflection at page 48 and find the assertion of the learned counsel for the appellant totally wrong and misleading. It has been stated by the witness of the management that “*FCI does not recruit Sweeper through contract*”.

There is, thus, no scope of any other inference being derived from the statement which offers no scope for any other interpretation.

According to us, learned counsel for the appellant has tried to mislead the Court and subvert the process of justice. We are also of the opinion that a totally frivolous appeal has been filed. If the stand of the appellant was that services are engaged through the Contractor then the particulars of the Contractor ought to have been mentioned in the written statement and evidence led to that extent. Rather the stand of the management through its witness is clear and unambiguous that they do not recruit Sweepers (the assignment given to the workman) through Contractor.

LPA-232-2018(O&M)

-4-

It is, thus, a clearly dishonest plea of the management which has been equally well propagated by the learned counsel for the appellant.

We are at pains to notice that the appellant being a government organization has chosen to adopt such an unfair stand against a poor sweeper.

Finding no infirmity in the impugned judgment, we dismiss this appeal with costs of ₹50,000/- which shall be compensatory to the workman and paid within a period of three months from today.

We also place on record our anguish about the conduct of the learned counsel for the appellant who has repeatedly tried to mislead the Court and asserted so despite being put on warning.

(MAHESH GROVER)
JUDGE

23.03.2018
mamta

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No