

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

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CWP No.2395 of 2019 (O&M)

Date of Decision : 16.05.2019

SHAM LAL

....PETITIONER

V/S

**THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, SAS NAGAR,
MOHALI, PUNJAB AND ANOTHER**

....RESPONDENTS

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

Present: Mr. Jaideep Verma, Advocate for the petitioner.

Service of respondent No.1 *dispensed with*.Mr. Rajesh Bhardwaj, Senior Deputy Advocate General, Punjab
for respondent No.2.

B.S. WALIA, J. (ORAL)

[1] Challenge in the writ petition is to award dated 26.11.2018 (Annexure P-19), praying for its modification by directing Respondent No.2 to regularize the services of the petitioner, in terms of settlement dated 07.09.2018 (Annexure P-16) made by respondent No.2 before the learned Industrial Tribunal as also for the issuance of directions to respondent No.2 to pay full back wages along with interest @ 18% per annum.

[2] Brief facts of the case, leading to the filing of the writ petition are that the petitioner started working as Beldar with the respondent-Management w.e.f. 05.06.1995. His services were terminated on 31.03.2006 allegedly in derogation of the provisions of Section 25 F, G & H of the Industrial Disputes Act, 1947 (for short 'the Act'). When the petitioner's prayer for redressal did

2(A) of the Act eventually leading to the matter being referred to the Industrial Tribunal under Section 10 (1) (C) of the Act for adjudication.

[3] In the proceedings before the learned Industrial Tribunal, the petitioner took up the stand that the respondent-Management had appointed Class IV employees, i.e. 2 Sewadars, 1 Watchman, 4 Lab Attendants and 1 Sweeper against regular appointments, by violating the provisions of Section 25 (H) of the Act.

[4] It is claimed that the said plea, on being put to the Management, resulted in the Management agreeing to take back the petitioner in service on regular basis, therefore, the matter was referred to the Lok Adalat and on 10.08.2018, parties got recorded their statements to reinstate the workman and the management sought time to take decision to regularize the services of the workman before 07.09.2018 on account of the Principal of the College having retired recently.

[5] On 07.09.2018, Mr. Jagjit Singh, Associate Professor of the respondent-College made a statement before the learned Industrial Tribunal that the College was ready to reinstate the workman as per approval given by the DPI (Colleges) and that he should join duty immediately in terms of Exhibit C-1, dated 06.09.2018 but since Dr. Sneha Lata, Principal had retired on 31.07.2018, as such, decision with regard to regularization of the services of workman would be taken by the successor Principal of the College. In the circumstances, the matter was adjourned to 26.11.2018 to enable the Management of the College to take a decision regarding regularization of service of the petitioner. On 26.11.2018, award was passed without reference to the past proceedings as noted above.

[6] A perusal of the award reveals that the same does not take into account the statement of the parties, as also the order passed on 07.09.2018 i.e. Annexure P-18. It is the grievance of the petitioner that although the respondent-Management gave assurance that it would consider the petitioner's claim for regularization for which the case was adjourned to 26.11.2018, yet on the said date, award was passed without referring to the claim of the petitioner-workman for regularization or for that matter with regard to any decision taken by the Management in respect thereto.

[7] Learned counsel for the petitioner further states that the award is also silent with regard to the claim for back wages and consequential benefits and that in the circumstances, while upholding the award to the extent of reinstatement, the matter be remanded to the learned Industrial Tribunal to record findings on the claim for back wages and consequential benefits, as also the claim for regularization in accordance with law in view of the statements of the parties made before the learned Industrial Tribunal, SAS Nagar, Mohali on 07.09.2018.

[8] Learned counsel for the respondent on instructions from Mr. Jagjit Singh, Associate Professor as also Mr. Harsimran Singh, Superintendent of the college states that they have no objection to the prayer of the petitioner.

[9] I have considered the submissions of learned counsel for the parties. The reference is " Whether termination of services of workman Shri Sham Lal son of Shri Ram Niwas by respondent/management is in illegal and unjustified manner ? If so, to what relief is he entitled to ? " There is no reference qua claim for regularization. In the circumstances, it is not open to the Industrial Tribunal to adjudicate the claim qua regularization in view of the

Indore Development Authority-2005(1) SCC 639 where the court held that a labour court derives its jurisdiction from the reference made by the Government and is bound to act within the four corners of the reference and in the absence of any reference of demand and pleadings and evidence the labour court has no jurisdiction to grant any relief. However, in the light of the statement of Mr. Jagjit Singh, Associate Professor and Mr. Harsimran Singh, Superintendent of the college, while upholding the award to the extent of reinstatement, the matter is remanded to the learned Industrial Tribunal, SAS Nagar, Mohali to record findings in accordance with law on the claim for consequential benefits as well as back wages and as regards claim for regularization, the petitioner workman is granted liberty to take recourse to remedy available to him in accordance with law.

[10] Parties through counsel are directed to put in appearance before the learned Industrial Tribunal, SAS Nagar, Mohali on **03.07.2019**.

[11] Learned Industrial Tribunal, SAS Nagar, Mohali, to endeavour to conclude the proceedings at the earliest, preferably within a period of three months from the date the parties put in appearance before it.

(B.S. WALIA)
JUDGE

May 16, 2019
'Rajneesh'

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