

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

CWP No. 5439 of 2019

Date of Decision: 28.02.2019

Chief Medical Officer, General Hospital, Hisar and another
...Petitioner

Vs.

Naresh Kumar and another
...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Ms. Shruti Jain Goyal, AAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. There was sufficient evidence on record for the Tribunal to conclude that industrial rights had developed in favour of the respondent No.1-workman at the time of termination. There was at least one continuous stretch of service from the year 2012 to 2015 when he was asked to leave the job. If the previous intermittent periods of service are taken in account to calculate the total length of service it would be more. The 240 days service principle for a deemed year backwards from 2015 is satisfied in this case.

2. The Tribunal has held Section 25-F of the Industrial Disputes Act, 1947 was breached inasmuch as the procedural requirements therein were not satisfied at the time of termination. There apart, person junior to the petitioner, named, Abhimanyu was retained in service the 'last come first go' principle in Section 25-G was also violated. This was additional reason in the award of the Labour Court to

conclude in favour of the claimant-respondent. It has been argued that respondent No.1 was engaged through outsourcing policy through a labour contractor but neither was the contractor produced nor the service contract was placed on record for the Tribunal to understand the import of the objection of the Department. The Tribunal has balanced the relief by reducing the arrears of back-wages to 50% and to that extent the Management has gained advantage over the workman. As far as reinstatement is concerned that too appears to be in order since it is not the case that the need for Sewerman has come to an end as the system is being continued through Contractor, assuming he holds a contract to provide labour.

3. Ms. Goyal says that even though the contractor or the contract was not produced still there was proof of payment by the department to the Contractor by way of receipts for the months of April and May 2015 Ex. M4. Even if this is considered relevant, it is not enough material to conclude that there was no relationship between the department and the workman who had been serving as a Sewerman since 2010, may be intermittently and with short breaks.

4. I would, therefore, not attach any tilting weight on the argument advanced by the law officer, finding no illegality, perversity or irrationality in the award of the Tribunal or it suffering any manifest legal error in appreciating the evidence brought on record and therefrom returning findings of fact in favour of the workman. I would,

accordingly, also find no good reason to interfere with the award and labouring to reach a different conclusion on the same material while applying the parameters of interference in awards of tribunals indicated by the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan, AIR 1964 SC 477.

(RAJIV NARAIN RAINA)
JUDGE

28.02.2019

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