

(102) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19876 of 2018
Date of decision 20.09.2019

Bimla Devi ... Petitioner

Versus

Presiding Officer and anr. ...Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. D.S. Adlakha, Advocate for the petitioner.

B.S. Walia, J. (Oral).

[1] Prayer in the writ petition is for setting aside award, Annexure P-15 dated 14.11.2017 whereby reference No.110 of 2011 was answered against the work lady (hereinafter referred to as the petitioner) as also for the issuance of a writ of Mandamus directing respondent No. 2 to reinstate the work lady in service with continuity and full back-wages.

[2] Learned Counsel contends that the petitioner who was working as peon/helper under respondent No. 2 w.e.f. 01.09.1989 on no objection dated 28.09.2004 by respondent No. 2, was on 16.12.2005 transferred to the Improvement Trust, Karnal (hereinafter referred to as the Improvement Trust) from there she was relieved / repatriated to respondent No. 2 vide letter dated 08.06.2009 by the Chairman, Improvement Trust but the liquidator did not accept her joining report on the ground that she had been retrenched on 31.08.2005, that the retrenchment dated 31.08.2005 was without compliance with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), therefore petitioner was entitled to be reinstated in service with full back wages.

[3] Case set up by the petitioner before the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal') was

that she was appointed as peon/helper on 01.09.1989 in the regular pay-scale of Rs.750-12-870-EB-14-940, that her work and conduct was good and on the Commissioner & Secretary to Govt. of Haryana Urban Development Department writing letter No.3/49/2002-IC-11 dated 29.02.2004 to the Deputy Commissioner, Karnal (hereinafter referred to as the Deputy Commissioner) for providing staff in the Improvement Trust, she submitted application on 31.08.2004 to the Deputy Commissioner to transfer her to the Improvement Trust, that respondent No. 2 gave no objection for her transfer to the Improvement Trust on 28.09.2004 whereupon the petitioner was transferred to the Improvement Trust on 16.12.2005 but from there she was relieved / repatriated to respondent No. 2 Department vide letter dated 08.06.2009 by the Chairman, Improvement Trust. Thereafter, the petitioner approached respondent No. 2 and submitted her joining report but the liquidator for respondent No. 2 did not accept the joining report, on the ground that due to financial losses, her services had been retrenched on 31.08.2005. Petitioner claimed that the order of retrenchment dated 31.08.2005 was in derogation of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

[4] That in the reply to the claim statement, respondent No. 2 contended that the petitioner was not a peon but a helper and was retrenched from the store as helper on being declared surplus w.e.f. 31.08.2005 after following the procedure under the Act and payment of compensation of Rs.16,196/- vide DD No.050397 dated 31.08.2005 which was encashed by the petitioner, besides, gratuity, EPF etc was also released to the petitioner on her request.

[5] That on the basis of evidence, the Tribunal came to the conclusion that the petitioner was retrenched on 31.08.2005 in accordance

with law after complying with the provisions of the Act and paying her retrenchment compensation of Rs.16,196 vide DD No.050397 dated 31.08.2005 as well as gratuity and EPF on her request, where after, on 16.12.2005, the Deputy Commissioner who happened to be the Chairman of respondent No. 2 as well as the Improvement Trust took the petitioner to the Improvement Trust from where the petitioner was eventually relieved on 08.06.2009.

[6] I have considered the submissions of learned counsel as well as perused the award. Learned counsel has not been able to controvert the finding in the award that as per documents Ex.MW-1/3 the petitioner's name figured amongst employees who were junior in the category of helper, therefore she was retrenched on 31.08.2005 and she did not challenge her seniority at the time of retrenchment, instead opted to join the Improvement Trust on 16.12.2005, that vide order Ex.MW-1/1 under Section 106 (1) of the Haryana Co-operative Societies Act, the Registrar, Co-operative Societies, Haryana appointed the Assistant Registrar as Liquidator of respondent No. 2, while MW-1/2 was the decision by the Board of Directors of respondent No. 2 to retrench helpers and other staff, Ex.MW-1/3 was the seniority list containing names of staff to be retrenched and the petitioner being junior in her category was retrenched by giving her demand draft No.050397 dated 31.08.2005 for Rs.16,196/- where after she was accommodated by the Deputy Commissioner in the Improvement Trust vide Ex.MW-1/4 where she worked from 16.12.2005 till 08.06.2009. In the aforementioned background, the Tribunal held that the petitioner was relied by the Improvement Trust on 08.06.2009 after having worked there w.e.f. 16.12.2005, and since she had already been retrenched by respondent No. 2

gratuity and EPF on her request, she had no claim against respondent No. 2, besides it was not her case that a junior had been retained.

[7] No doubt, respondent No. 2 gave no objection on 28.09.2004 for transfer of the petitioner to the Improvement Trust but before the proposal for transferring the petitioner to the Improvement Trust could fructify, her services were retrenched by respondent No. 2 on 31.08.2005 against payment of retrenchment compensation of Rs.16,196 vide DD No.050397 dated 31.08.2005 which she encashed. It was thereafter that the petitioner was accommodated by the Deputy Commissioner who was not only the Managing Director of respondent No. 2 as well as Chairman of the Improvement Trust, in the Improvement Trust on 16.12.2005. The question of transferring a retrenched employee did not arise. The petitioner was not only paid retrenchment compensation on the date of her retrenchment i.e. on 31.08.2005 but she also received gratuity and EPF as admissible on an application given by none else than herself.

[8] In the circumstances, the stand of the petitioner in the year 2009 after being relieved from the Improvement Trust that her services had been retrenched by respondent No. 2 on 31.08.2005 in derogation of the provisions of the Act, is without any lawful basis especially since the petitioner not only received retrenchment compensation of Rs.16,196 vide DD No.050397 dated 31.08.2005 but also gratuity and EPF.

[9] Accordingly, finding no merit in the writ petition, the same is dismissed.

(B.S. Walia)
Judge

20.09.2019

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