

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 07.02.2019****CWP No.6787 of 2016**

Parvesh Kumar

...Petitioner

Vs.

The Chief Engineer, HPGCL, Panchkula & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sudhir Rana, Advocate, for the petitioner.

Mr. Padamkant Dwivedi, Advocate, for respondents No.1 & 2.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner claims service as a Part Time Sweeper from 17.02.1999 to 15.11.2010. By letter dated 16.11.2010, the petitioner was informed that his services were no longer required, as the work of sweeping was outsourced and the office of the CAO was being shifted from Sector 11, Panchkula to Urja Bhawan in the same city. Effectively the services of the petitioner were retrenched due to adoption of outsourcing policy to provide labour through contractor.

2. The petitioner raised a dispute, which was referred to the Labour Court, Panchkula to be later transferred to Labour Court, Ambala. The Labour Court at Ambala passed an award dated 03.10.2013 in favour of the petitioner and the Corporation was directed to reinstate him with continuity of service w.e.f. 15.11.2010 and for payment of 50% of the arrears of back wages. The Corporation did not appeal against the award and the same became final. The award was complied with and the petitioner was

reinstated only to be retrenched again on 26.08.2015. The petitioner says that the retrenchment was actuated by his demand for regularization of service by a representation dated 11.03.2015.

3. This is a rare case in which one finds that the services of a Part Time Safai Karamchari have been dispensed with after following the procedure laid down in Section 25-F of the Industrial Disputes Act, 1947. The arch enemy of the Management i.e. Section 25-F has been respectfully obeyed and simultaneous payment of Rs.35,700/- has been paid by way of draft representing one month's wages and retrenchment compensation computed at the rate of 15 days' average wages for every completed year of continuous service or any part thereof in excess of six months for the period 17.02.1999 onwards. Offer of payment is simultaneous with termination. Non-acceptance of payment offered, if it was the complaint, is inconsequential. He can still claim it but that will have no effect on the retrenchment.

4. It is not the plea of the petitioner in this petition that payment was short or what was required to be paid in compliance of Section 25-F of the Act remained due. The petitioner did not raise an industrial dispute against the second retrenchment by seeking a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 read with Section 2A or by directly approaching Labour Court under amended Section 2A(2) of the Act by following the procedure laid down in the amended provision. The petitioner has filed this petition with the following prayers:

- “(i) issue a writ, order or direction especially in the nature of certiorari, quashing the impugned letters dated 26.08.2015 (Annexure P/6) and dated 24.09.2015 (Annexure P/8) to regularize the services of the

petitioner and taking into consideration the regularization policy dated 09.07.2014 (Annexure P/12) of the Government of Haryana.

- (ii) Further, issue a writ in the nature of mandamus directing the respondents to reinstate the petitioner in service along with all consequential benefits, especially in light of order dated 03.10.2013 passed by learned Labour Tribunal, Ambala (Annexure P/4).
- (iii) issue any other appropriate writ, order or direction which this Hon'ble court may deem fit and proper in the facts and circumstances of the present case."

5. The question of regularization can only arise if the retrenchment is set aside. The foremost question which falls for consideration is whether any interference is required in the order of retrenchment. As far as retrenchment is concerned, the petitioner could always have raised an industrial dispute, which is an alternative remedy.

6. The Full Bench of this Court in Manohar Lal Vs. State of Punjab through the Secretary, PWD (PH), Punjab, Chandigarh & another, 1983 PLR 666; 1983 (2) ILR (Punjab) 576 has guided that the right to remedy under the ID Act is an alternative remedy to which workman should be relegated to in the first instance when industrial rights are claimed. If the reason for retrenchment based on outsourcing is not to be faulted, then it would be difficult to warrant invalidation of the order of retrenchment. Section 25-F of the Act requires the procedure laid down to be followed while retrenching workman. He must be given notice, wages in lieu of period of notice and retrenchment compensation calculated in the manner provided and to be informed of the reason of retrenchment as required by Section 25-F(a). When these ingredients have been satisfied by the Corporation, then at least in writ proceedings remedy is not available to

apply industrial rights for the first time. In view of this, the claim for regularization can also not be gone into by writ court in the circumstances.

7. Since the petitioner has remedy under the Industrial Disputes Act, which he has not availed, this petition is dismissed by affording him an opportunity to seek redress under the industrial law just as the workman did when his services were first terminated. The previous award has run its course with the creation of the adverse order of retrenchment and the petitioner cannot get any advantage of that award any longer except what view the Labour Court might take on the entire case, if the petitioner has resort to his industrial law remedy and it is advised. In case, a legal redress is sought before the Industrial forum, anything said herein will not influence the mind of the Labour Court.

8. The petition is dismissed with the liberty granted.

07.02.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>