

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

LPA No.1194 of 2016 (O&M)
Decided on : 28.02.2019

Ram Kishan Sharma

..... Appellant

Versus

Presiding Officer, Industrial Tribunal
-cum-Labour Court, Hisar and anr.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. B.S.Mittal, Advocate
for the appellant.

Mr. Puneet Jain, Advocate for
Mr. Rakesh Gupta, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.

This appeal is directed against the order dated 31.03.2016 passed by learned Single Judge.

2. The case of the appellant is that he had been working with respondent No.2- College as Peon/Chowkidar since 10.12.1998. He was also performing the duties of Pujari in the temple situated near the entrance gate of the college but on 01.11.2011 his services were wrongly and illegally terminated by respondent No.2. Thereafter, an industrial dispute was raised by the appellant wherein Industrial Tribunal (for brevity 'the Tribunal') held him entitled to no relief inasmuch as he was working only as a Pujari and hence, he could not be treated as a 'workman' with respondent No.2, as defined under Section 2(s) of the Industrial Disputes Act, 1947 (for

short 'the Act'). Aggrieved by the order passed by the Tribunal, the appellant approached this Court by way of CWP No.27242 of 2015 wherein learned Single Judge upheld the award passed by the Tribunal by affirming that the appellant did not fall within the definition of 'workman' since he had failed to establish that he had been appointed as Peon/Chowkidar by the respondent-college or that he was performing any additional duty.

3. Learned counsel for the appellant contended that the learned Single Judge erred in not taking into account the evidence, which was led by the appellant before the Tribunal wherein he had categorically deposed while stepping into witness box as WW-1 that apart from performing the duties of a Pujari, he also worked as a peon for the respondent-college. Hence, the appellant fell under the definition of 'workman' as he had been performing multiple duties. Learned counsel for the appellant also laid much stress on Annexure A-1, which has been filed along with the application under Order 41 Rule 27 of Civil Procedure Code for leading additional evidence and contended that the services of the appellant were terminated without granting him an opportunity of personal hearing.

4. Learned counsel for respondent-college, on the other hand, submitted that the appellant had been appointed on part time temporary basis as a Pujari and had all along been performing his duties as such, for which he was being paid ₹ 3,000/- per month. Learned counsel for the respondent-college also drew our attention to the copies of various correspondence between the respondent-college and the appellant, adduced before the Tribunal as Ex.M-1 to M-9. He contended that the same clearly

reflected and established that the appellant had been working as Pujari only, in the temple of the college.

5. We have heard learned counsel for the parties and perused the material available on record with their assistance.

6. The application for additional evidence under Order 41 Rule 27 of Civil Procedure Code cannot be acceded to at this belated stage as no explanation has been furnished as to why the said document was not produced earlier. In the absence of any satisfactory reason, the said document cannot be looked into. Moreover, a perusal of the said document Annexure A-1 filed alongwith the application show that it is only a copy of some notice issued by Principal, M.P.College (For Women) Dabwali dated 15.12.2007. Therefore, Annexure A-1 does not prove the case of the appellant in any manner. The application for additional evidence is thus, rejected.

7. Section 2(s) of the Act defines a 'workman' as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be expressed or implied and includes any such person, who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute.

8. The appellant did not produce any document to establish that he was ever appointed on the post of peon/chowkidar by the respondent-college. Moreover, a perusal of Ex.M-1 to M-9 establishes that he was working only as a Pujari in the college temple. A Pujari in a temple cannot be termed as a workman since the duties performed by him in the temple

would not be covered under Section 2(s) of the Act. Failure to produce any document to show that he was rendering services as peon/chowkidar in the respondent-college, the case of the appellant would not fall within the definition of 'workman' as defined in the Act. The Tribunal rightly appreciated the evidence on record in the correct perspective to arrive at a finding that the appellant could not be treated as workman without any corroborative evidence to the effect while working as a Pujari, the appellant also performed the duties of a peon. Therefore, the learned Single Judge upheld the award of the Tribunal.

9. Keeping in view the discussion made above, we decline to interfere in the Letters Patent Appeal and dismiss the same.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

28.02.2019

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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No