

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

LPA No.1412 of 2016 (O&M)
Decided on : 21.01.2019

State of Haryana & others

..... Appellants

Versus

Presiding Officer, Industrial Tribunal-cum-Labour
Court, Ambala & anr.

..... Respondents

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

Present : Mr. Randhir Singh, Addl. AG, Haryana.

Mr. Ashutosh Kaushik, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.

CM-2959-LPA-2016

This application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 95 days in filing the appeal. The application is duly supported by an affidavit of the officer concerned.

For the reasons mentioned in the application, delay of 95 days in filing the appeal is condoned.

CM stands disposed of.

CM-4212-LPA-2018

Application is allowed and documents (Annexures R-2/1 to R-2/2) are taken on record subject to all just exceptions. Office to tag the same at appropriate place.

LPA-1412-2016

The instant intra Court appeal under Clause X of Latent Patent has

been preferred impugning the order dated 18.03.2016 vide which the writ petition filed by the petitioner (appellants herein) against the award dated 14.01.2014 was dismissed by the learned Single Judge.

2. Respondent No.2 - Roshni Devi was working as a part-time sweeper for one hour per day on working days @ ₹ 50/- per month on D.C. Rates, since February, 1988. After termination of her services vide order dated 05.07.2004, she filed CWP No.12865 of 2004 seeking regularization of her services. The said writ petition was disposed of vide order dated 09.08.2005 with directions to the appellants to consider her case for regularization of services. Thereafter, respondent No.2 filed COCP No.234 of 2006 before this Court, which was dismissed vide order dated 06.08.2007. Since liberty had been granted to respondent No.2 to challenge the order dated 28.11.2005 (Annexure P-4) passed by Labour Commissioner, Haryana wherein the management had declined her request for regularization of her services, respondent No.2 filed CWP No.7062 of 2008, which too was dismissed by this Court vide order dated 06.11.2008. Finally, respondent No.2 served a demand notice on 02.09.2009 in which she challenged her termination.

3. The appellants/petitioners on the other hand, rejected the claim of respondent No.2 for regularization of her services as she had been only working with them as a part-time sweeper since February, 1988 for one hour every day. As per the appellants, the services of respondent No.2 were dispensed with on 06.07.2004 since management had taken a decision to outsource auxiliary services like cleaning, sweeping and security etc.

4. Learned counsel for the appellants-State contended that respondent No.1 erred while ordering reinstatement of respondent No.2 with continuity of services and 50% back-wages inasmuch as the evidence led and

documents produced by the appellants were not appreciated by respondent No.1 in its right perspective. Learned counsel for the appellants further contended that learned Single Judge was in error in concluding that the services of respondent No.2 were dispensed with by the appellants without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short 'the Act') as the same did not amount to retrenchment within the meaning of Section 2(oo) of the Act in the light of sub clause (bb) of Section 2(oo) which clearly excludes termination of services of a workman as a result of non-renewal of contractual employment or on its expiry or of such contract being terminated. The status of respondent No.2 was only one of part-time employee and hence, she had no right to continue on the post. Therefore, there was no such requirement of compliance with the provisions of Section 25F of the Act.

5. We have heard learned counsel for the parties and perused the record.

6. It is apparent that the learned Single Judge while going through the record and evidence in detail rightly concluded that the services of respondent No.2 had been terminated without complying with the provisions of Section 25F of the Act.

7. It is an admitted case that respondent No.2 had put in a number of years of service with the appellants as a part-time sweeper. Further, while terminating her services, there was no compliance of the mandatory provisions of Section 25F of the Act. The plea taken by the appellants that the management had decided to outsource auxiliary services i.e. cleaning, sweeping and security etc. would not help the cause of the appellants as no evidence qua this aspect was led on record, much less any details given as to

when the actual outsourcing of auxiliary services was made to an external agency. The findings recorded by the learned Single Judge reads thus:

“In the present case, although, respondent No. 2 had worked with the petitioners as a part-time Sweeper but admittedly she had put in a number of years of service with the petitioners. Services of respondent No. 2 were terminated without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act' for short). Although, petitioners had taken a plea in the written statement that the management had decided to outsource the auxiliary services like sweeping etc. however, no other evidence in this regard was led on record apart from the statement of MW-1 Shiv Ram Saini. A perusal of statement of MW-1 (Annexure P-12) reveals that he had not given any details as to when the work of sweeping was actually handed over to the contractor. Moreover, respondent No. 2 had been working with the petitioners for a number of years when her services were terminated without complying with the mandatory provisions of Section 25 of the Act. In these circumstances, the Labour Court rightly held that respondent No. 2 was entitled to be reinstated in service.”

8. In view of the aforementioned discussion, we find that the instant appeal is devoid of any merit. Order dated 18.03.2016 passed by learned Single Judge is affirmed and the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

21.01.2019
sonia

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No