

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

CWP No.32307 of 2019
Date of decision: 06.11.2019

State of Punjab and others ...Petitioners

versus

Ashwani Sharma and another ... Respondents

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

Present: Mr. Sandeep Kumar, Asstt. Advocate General, Punjab.

B.S. Walia, J.,

1. Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing award Annexure P/8 dated 10.05.2019, passed by the learned Industrial Tribunal, Bathinda, (hereinafter referred to as 'the Tribunal').

2. Brief facts of the case as per claim set up by respondent No.1 (hereinafter referred to as the workman) before the Tribunal are that he was employed by the petitioners as clerk on contract basis on 01.10.2012 and continued in service upto 05.05.2014 on salary of Rs.9163/- per month whereupon his services were illegally terminated. Stand of the department on the other hand is that the workman was never their employee and was engaged through a contractor.

3. On the basis of evidence led before it, the Tribunal came to the conclusion that even though there was no appointment letter from which it could be ascertained as to in what capacity the workman was engaged, yet there was a plethora of documents i.e. Ex.W-1 to W-4 and W-4/A which revealed that the workman was working as clerk in the department as also

representing it before various Courts as Clerk and further that there was

nothing on the record to show that the workman was performing duty as a Data Entry Operator. The Tribunal also referred to photocopy of identity card issued by the department in favour of the workman to hold that he was working as Clerk in the department and that if his services had been engaged as Data Entry Operator, then what was the necessity for the concerned department to have issued him identity card depicting him to be working as Clerk with the department. The Tribunal held that the plea that the workman had been engaged through contractor was unbelievable as no evidence in respect thereto had been led and what to talk of bringing any such record before the Court, the petitioners had failed to even disclose the particulars of the contractors through whom the workman was allegedly engaged. The Tribunal further came to the conclusion that it was the admitted case of the parties that the workman had rendered service in the department from 01.10.2012 till 05.05.2014, i.e. for more than 240 days in the year preceding his termination and that too without issuance of any notice, conducting inquiry or payment of compensation, therefore, the removal of the workman was in derogation of the mandatory provisions of the Industrial Disputes Act, 1947. Accordingly, the Tribunal answered the reference in favour of the workman and ordered his reinstatement with continuity of service but without back wages.

4. Learned Assistant Advocate General apart from contending that the workman was not engaged directly by the department but through contractor, has failed to refer to any evidence to show any such arrangement between the department and any contractor and of any contractor having supplied the workman for rendering service in the petitioner/department or of the workman having been engaged as Data Entry Operator. On the contrary, on being confronted with the evidence discussed by the Tribunal

with regard to the workman being engaged as a Clerk and representing the petitioner's department in proceedings before various Courts as Clerk, learned Assistant Advocate General was at a loss of words to give any explanation for the same. Thus, learned Assistant Advocate General has failed to refer to any material from which it can be inferred that the workman was engaged by the department through a contractor for providing services to it and was not engaged directly as a Clerk.

5. Learned Assistant Advocate General lastly contended that even if it be presumed that the department had failed to establish that the workman was engaged through a contractor, but in view of the workman having failed to establish his having been engaged in service after following rules, relief of reinstatement could not be granted. I am afraid, even this contention of learned Assistant Advocate General is of no legal consequence in view of the Full Bench decision of this Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another 2014 (4) SCT 514**, as per which reinstatement on account of violation of Section 25-F of Industrial Disputes Act, 1947, could not be denied solely on the ground that appointments made by a public body against a public post was not in accordance with the relevant statutory rules.

6. In the light of the position as noted above, no circumstances have been pointed out warranting interference with the award passed by the Tribunal. The writ petition is bereft of merit and is accordingly dismissed.

(B.S. Walia)
Judge

06.11.2019

rajesh.k.khurana

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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No. |