

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.23494 of 2014
DECIDED ON : 30.01.2020

Sunena

...Petitioner

versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and
others.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr.Puneet Gupta, Advocate for the petitioner.

Mr. Padamkant Dwivedi, Advocate,
for respondents No.2 and 3.

GIRISH AGNIHOTRI, J. (ORAL)

Present petition has been filed by the petitioner-Sunena, *inter alia*, praying for writ in the nature of certiorari for quashing and setting aside the Labour Court award dated 18.07.2014 (Annexure P-7).

With able assistance of counsel for the parties, this Court has examined the award dated 18.07.2014 (Annexure P-7).

The pleaded case of the workman as noticed by the Labour Court in its award was that work lady (hereinafter called as workman) had joined her services on 15.07.1993 as Accountant Clerk (Trainee). The workman continued in service till 22.09.1998.

The pleaded case of the Management before the Labour Court, as noticed in the award was that the workman had taken job as trainee Counselor vide order dated 25.03.1993 (which is already on record as Annexure P1). It was the case of the Management that she was not taken against any regular posts. It is the specific case of the Management that some trainees filed a writ petition bearing No.2921 of 1998 titled as 'Baljit

Singh and others Vs. State of Haryana and others'. The said petition was disposed of on 17.08.1998. The case of the Management further is that in absence of any vacancy and in pursuance of the judgment of this Court dated 17.08.1998, the workman was relieved w.e.f. 22.09.1998.

This Court is of the view that when a decision was taken by the Management to relieve the workman w.e.f. 22.09.1998 it was obligatory on the part of the Management to comply with the mandatory provisions of the Industrial Disputes Act, 1947, Section 25-F.

I am supported by the view taken by this Court in CWP No.4422 of 1998 titled as '*Mahender Singh and others Vs. State of Haryana and others*' decided on 15.09.2017.

It needs to be noticed that in the judgment dated 15.09.2017 passed in CWP No.4422 of 1998, this Court has observed as under:-

*“15. Thus, even though 5 out of the 8 petitioners are shown to be appointed in the year 2007, Ms.Abha Rathore, learned counsel for the petitioners submits that as a matter of fact, the petitioners are entitled to be allowed to continue in service from the dates that they were relieved, in terms of the judgment of a Full Bench of this Court in **Virender Singh v. Haryana Tourism Corporation Ltd.** 2005 (2) SCT 837.*

Learned counsel pointed to the fact that the petitioner before the Full Bench was also identically placed as the present petitioners, he having first undergone training for the post of a Counter Incharge for a period of five and half months and thereafter having worked as a Trainee Waiter for 9 years.

Thus, the petitioner in that case had contended that though he had worked for a such long time as a Trainee Waiter, he was not given appointment either as a Counter Incharge or as a Waiter.

There being a difference of opinion expressed by the Division Bench before whom the aforesaid writ petition came up for hearing, the petitioner in that case having relied upon an

earlier Division Bench judgment in CWP no.16772 of 1999, the matter was referred to a Full Bench, wherein a stand was taken by the petitioner that his services had been terminated vide an order dated 17.05.2001, with no retrenchment compensation having been paid to him in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The dismissal of Tikka Rams' case (supra) on account of nonavailability of vacancies, was also brought to the knowledge of the Full Bench.

The response of the Haryana Tourism Corporation in that case also, was to the effect that the services of the petitioner in that case were never terminated and he was relieved from training as per the terms and conditions of his appointment letter and hence, he had no right to be appointed to the post of a Waiter, on which he had been shown to be a trainee for a long time.

16. *Noticing the pleadings and the arguments before it, the Full Bench formulated the question that arose before it, as to whether the petitioner therein was a trainee having been appointed under the Apprentices Act, 1961, and therefore whether the provisions of the Industrial Disputes Act, 1947, would apply or not to his case.*

The ancillary question that was found to be requiring adjudication upon, was whether the petitioner in that case was a workman as defined in Section 2(s) of the Act of 1947 and if so, would the order impugned in that case be sustainable, the provisions of Section 25-F of the Industrial Disputes Act, 1947, not having been complied with.”

In the said judgment/order dated 15.09.2017, this Court had issued following directions:-

“Yet, firstly, it has not been shown from any document placed on record by the respondents, that the petitioners' training was ever actually extended on account of unsatisfactory performance, after the two year period got over (between June to August, 1996), but even if by some stretch of imagination it is to be presumed that their training was extended for six months, at best such period of six months

would have also ended between December 1996 and February 1997.

The petitioners not having been relieved at even the end of two and half years, and having continued as Trainee Waiters till November 1997, when they were relieved vide the impugned orders, then it has to be inferred by this Court, without doubt, that they actually successfully completed their training at the end of two years itself, with no extension letter given to them due to unsatisfactory completion and after the end of two years, they were actually no longer apprentices, even if they are deemed to have been appointed under the terms of the Apprentices Act, 1961.

Therefore, as was held by the Full Bench in Virender Singhs' case (supra), thereafter, the petitioners continued to be workmen with the respondent Corporation in terms of Section 2(s) of the Industrial Disputes Act, 1947.

Hence, they could not have been relieved from work without compliance of Section 25-F of the aforesaid Act.

23. Therefore, this petition is partly allowed, to the extent of the petitioners being reinstated in service, w.e.f. the date that they were relieved, with continuity of service and 25% back wages, there being a violation of Section 25-F of the Industrial Disputes Act, 1947.

As regards the prayer for regularization, petitioners Sohan Singh, Bhim Singh, Mahabir Singh, Jan Mohd. and Padam Singh already having been appointed to regular posts in the year 2007, with the other three not having been so appointed for the reasons already given, and the specific contention of the respondents being that the posts to which the petitioners could have been appointed having been sanctioned only in January 1999, i.e. about one year and two months after the petitioners were relieved, no further direction can be given.

The other directions given hereinabove, be carried out within a period of 3 months from the date of receipt of a certified copy of this order.

No order as to costs.”

It has also been brought to the notice of this Court that LPA

No.156 of 2018 was filed against the aforementioned judgment i.e. CWP No.4422 of 1998. The said LPA was disposed of on 01.02.2018. In the Division Bench judgment dated 01.02.2018, the reinstatement in service so ordered was upheld but without any back wages. The Corporation has further challenged the said judgment in SLP. But vide order dated 12.10.2018, the SLP filed by the Corporation was also dismissed.

This Court, therefore, in view of the above observations has no hesitation to hold that the decision of the respondent-Corporation to relive the workman w.e.f. 22.09.1998 even without compliance of mandatory provisions of the Industrial Dispute Acts, has fallen to error and therefore, is declared by this Court to be unsustainable in the eyes of law.

The records of the case show that at the initial stage of hearing of the writ petition itself, notice was issued to the respondents on the limited issue i.e. as regards grant of adequate compensation in view of the length of service that the petitioner-workman has rendered.

Learned counsel for the petitioner relies on judgment/order dated 29.11.2014 passed in '*LPA No.754 of 2010 titled as Municipal Council Dina Nagar, Labour Court, Gurdaspur and another Vs. Presiding Officer, Labour Court, Gurdaspur and another*', wherein the Division Bench had held the appellant therein entitled to compensation of Rs.1,25,000/- for each completed year of service rendered by them. It was further ordered that respondent-workmen, who had served the appellant as Peons therein, were entitled to compensation @ Rs.1,00,000/- for each completed years of service rendered by them with the appellant.

Learned counsel for the respondent, however, submits that the workman herein was not discharging duties as regular Accounts Clerk and was in fact Accounts Clerk trainee.

In totality of above circumstances, this Court deems it appropriate to award compensation @ Rs.1,00,000/- for each completed year of service. In order to give a round figure since the workman had worked from 1993 to 1998 it is deemed appropriate to award Rs. 5,00,000/- as compensation in lieu of the reinstatement.

The writ petition is therefore, partly allowed in the above terms.

Let the needful be done within three months from the date of receipt of certified copy of the order.

January 30, 2020
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(GIRISH AGNIHOTRI)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO