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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-. -

CWP-18260-2021

Date of decision: 10.05.2022

Nardhian Singh

.....Petitioner

Versus

The Presiding Officer, Industrial Tribunal Patiala and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Ravneet Singh Joshi, Advocate for the petitioner

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Rajbir Sehrawat, J. (Oral)

The present writ petition has been filed under articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing award dated 04.12.2019 (Annexure P-11) passed by respondent No. 1. Further prayer has been made for issuance of writ in the nature of mandamus, directing the respondents to reinstate the petitioner in service with all consequential benefits.

The case of the petitioner, as pleaded in the petition and put forth by counsel for the petitioner is that the petitioner was appointed as Clerk on 27.07.2001 with respondent-department on a fixed monthly salary of Rs.3,120.00. However, his service was terminated on 26.07.2002, without any notice/charge-sheet or without payment of compensation. Asserting these facts, the petitioner-workman had raised an industrial dispute, which was referred to the

Labour Court for adjudication. Ultimately, the said reference has been answered against the petitioner-workman. Hence the present writ petition.

Counsel for the petitioner has also submitted that the Octroi department was handed over to the Contractor only in the year 2002, therefore, the work which was being performed by the petitioner, was available with the respondent-department and the petitioner should not have been removed from the service. Counsel has further submitted that contracts of the similarly situated persons but junior to the petitioner-workman; were extended by the respondent-department upto the year 2006. Hence the award passed by the Tribunal is totally illegal and unjust.

Per contra, the stand of the respondents is that earlier the respondent itself was carrying out the work. But in the year 2002, the work was outsourced to a contractor. Hence, the contract of the petitioner was not extended. Moreover, the Octroi department was itself abolished in the year 2006 by the Punjab Government and there was no post of Octroi Clerk with the respondents, where the petitioner could be adjusted/employed.

Having heard counsel for the petitioner and having perused the record, this Court does not find any substance in the arguments raised by counsel for the petitioner. It is not in dispute that the petitioner was engaged on contract basis for a fixed period. It is also not disputed that services of the petitioner were ended on account of

non-renewal of the contract. Hence, termination of the petitioner is not retrenchment as per Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and, as such, the respondent-department is not under obligation to comply with any of the provision prescribed for retrenching an employee or payment of retrenchment compensation. Although counsel for the petitioner has also submitted that the work was available with the respondent-department in the year 2002 and services of similarly situated persons, as to the petitioner, were continued upto 2006 when the department was abolished, therefore, the petitioner should have been continued in service, however, this argument is totally irrelevant for the purpose of the case of the petitioner. There is nothing on record to show that any person, junior to the petitioner-workman; was retained in service by the respondent-department, when service of the petitioner was terminated. Moreover, service of the petitioner was contractual in nature, therefore, even if similar situated persons were continued in service on the basis of their subsisting contracts; that cannot be ground for the petitioner to claim parity, so as to invoke the principle of '*last come, first go*'.

In view of the above, finding no illegality with the award passed by the Tribunal, the present writ petition is dismissed.

(Rajbir Sehrawat)
Judge

May 10, 2022
mohan bimbura

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No