

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

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CWP No.4896 of 2022 (O&M)
DATE OF DECISION: 24th MARCH, 2022

Jaswinder Singh

.... Petitioner

Versus

**Presiding Officer, Industrial Tribunal & Labour Court, U.T.
Chandigarh and another**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. B.R. Bansal, Advocate for the petitioner.

Mr. Parminder Singh Kanwar, Advocate,
Additional Standing Counsel,
for the respondents-U.T. Chandigarh.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari to set aside the impugned award dated 24.11.2021 (Annexure P-13) passed by respondent No.1, whereby the claim of the petitioner-workman for reinstatement with continuity of service along with back wages and other benefits has been rejected, with a further prayer to issue a writ in the nature of mandamus directing respondent No.2 to reinstate the petitioner with full back wages and all other consequential benefits accrued from the date of his termination.

It is submitted by the counsel for the petitioner that the petitioner was appointed as a driver on contract basis w.e.f. 08.06.2012, pursuant to a due selection. The appointment of the petitioner was for an initial period of six months or till the regular appointee comes, which

ever was earlier. However, the said appointment was extended from time to time. As a result, the petitioner continued to serve as a driver with respondent No.2-department till 16.07.2016, i.e. the date on which the petitioner was asked not to come to the office. The counsel has submitted that when the petitioner was retrenched from service, he was not given any notice nor was he granted any retrenchment compensation. The counsel has submitted that the officers of the respondent-department had, in fact, terminated the services of the petitioner to adjust their own man; because thereafter; the respondent No.1-department had resorted to engaging the driver by outsourcing from the company i.e. M/s Golden Eagle Security Services, Sector-22-C, Chandigarh. This was nothing but unfair labour practice on the part of the respondent-department. The counsel has further submitted that the respondent-department has committed illegality because the petitioner could not have been replaced by another contractual employee. The Labour Court has not properly appreciated these facts. Hence, the Labour Court has answered the reference against the petitioner by recording perverse findings. The counsel has further submitted that the petitioner was having a valid driving licence to drive the vehicle of the category on which he was engaged, therefore, there was no reason with the respondent-department to dis-continue the service of the petitioner. Hence, the award passed by the Labour Court deserves to be set aside and the petitioner deserves to be reinstated into service.

Having heard the counsel for the petitioner and having perused the case file, this Court does not find any substance in the argument raised by the counsel for the petitioner. It is not even disputed

by the counsel for the petitioner that the last tenure of the contract of the petitioner was w.e.f. 13.01.2016 till 12.07.2016 or till the regular appointments were made, which ever was earlier. It is also not even disputed that no regular appointment has been made by the respondent-department in replacement of the petitioner. Hence, in essence, the contract period of the petitioner and thus his tenure of engagement expired on 12.07.2016. There is nothing on record to show that the contract of the petitioner was ever renewed by the respondent-department after this date. Hence, this Court finds substance in the stand of the respondent-department that the termination of service of the petitioner happened on account of non-renewal of the fixed tenure contract of service of the petitioner. The termination happening on account of non-renewal of the contract; does not fall within the definition of the 'retrenchment' as denied under Section 2 (oo) of the Industrial Disputes Act, 1947 (for short, the Act). Rather, Section 2(oo) (bb) of the said Act excludes the termination on account of non-renewal of contract from the definition of retrenchment. Hence, neither any fault could be found with the action of the respondent-department, nor any fault could be found with the findings recorded by the Labour Court that the dis-engagement of the petitioner was not retrenchment and that the same was covered under the provisions of Section 2 (oo) (bb) of the Act. In view of this factual and legal conspectus, the respondents were under no legal obligation either to issue any notice or to grant any compensation or to follow any other rule relating to the retrenchment. Needless to say that the counsel for the petitioner has failed to point out as to why his case was not covered under the provisions of Section 2 (oo) (bb) of the Act.

Although, the counsel for the petitioner has also raised the argument that the respondent-department could not have replaced the petitioner with another person appointed through outsourcing or on contract basis and that the petitioner was entitled to continue till the regular appointments was made, however, this Court finds that the said argument is irrelevant for the purpose of the case of the petitioner. The industrial law does not know the concept of continuing a workman till regular appointments are made. In fact, the industrial laws, particularly the Industrial Disputes Act, are meant to deal with the situations where the employer has to resort to frequent removals and re-engagement keeping in view his requirements and the financial viabilities. Hence, the Industrial Disputes Act gives full liberty to the employer to retrench the workman but by complying with certain statutory requirements like payment of retrenchment compensation. The employer, while acting under the Industrial Disputes Act is required to follow only the stipulations and conditions prescribed under the Act. Hence, no fault could be found with the action of the respondent-department, if they have engaged another person through outsourcing, after the tenure of contract of the petitioner was over, finding the same to be more appropriate or more economical for them.

In view of the above, finding no merit in the present petition, the same is dismissed.

24th MARCH, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes