

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

112

LPA-679-2022 (O&M)

Date of Decision: August 17, 2022

DEVINDER DESWAL

...APPELLANT

Versus

PRESIDING OFFICER AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Naveen Daryal, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.(ORAL)

Challenge in this appeal is to the judgment passed by the learned Single Judge dated 18.04.2022, whereby the writ petition preferred by the appellant (petitioner therein) challenging the Award dated 26.11.2015 (Annexure P-6) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Chandigarh, stands dismissed.

It is the contention of the learned counsel for the appellant that the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Chandigarh as also the learned Single Judge have failed to appreciate that there is no plea taken in the written statement/reply to the claim petition of the appellant that the services of the appellant were terminated/dispensed with in pursuance to the provisions as contained in Section 2 (oo) (bb) of the Industrial Disputes Act, 1947. Counsel contends that in the absence of such a pleading being taken, the same could not have been pressed into service by the Labour Court as well as the learned Single Judge to come to a

conclusion that the appointment of the appellant was contractual in nature and for a fixed term and engagement for a particular job. The fact that the appellant had completed more than 240 days in a calendar year has not been disputed and rather admitted and, therefore, non-compliance of the provisions of Section 25F of the Industrial Disputes Act would render the Award passed by the Industrial Tribunal-cum-Labour Court as well as the judgment of the learned Single Judge unsustainable. In support of this contention, he has placed reliance upon a judgment of the Hon'ble Supreme Court in **Devinder Singh vs. Municipal Council, Sanaur**, (2011) 6 Supreme Court Cases 584.

We have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the pleadings as well as the records of the case but do not find ourselves in a position to accept his contentions.

A perusal of the reply to the claim petition, which has been filed before the Industrial Tribunal-cum-Labour Court by the respondent-Management dated 05.01.2004 (Annexure P-2), would show that the appellant has been appointed on fixed tenure according to the appointment orders dated 20.10.1998, 10.02.1999 and 24.05.1999 and he had worked under various research projects like AICWIP, DBT programme and in Quality Lab. These appointment letters have been placed on record and a perusal of the said appointment letters, which have been appended along with the reply which has been filed to the writ petition, would show that the appointment of the appellant had been for a fixed period of three months at a stretch. The said appointment is also mentioned to be on purely temporary basis starting from the date of joining @ DC approved rates per month for

doing the typing work, research articles etc. The appointment indicates in different departments at different periods of time and, therefore, for a fixed purpose and under different programmes, as has been referred to above. Mere non-mention of the applicability of the provisions of Section 2 (oo) (bb) of the Industrial Disputes Act would not render the stand of the respondent-Management of such a nature where they cannot take the legal plea. The provisions of law are to be applied on the basis of the pleadings. The fact remains that there is specific stand taken by the Management that the appellant was appointed for a fixed tenure and in different projects and with the conclusion of the said tenure, his appointment came to an end.

The findings, therefore, recorded by the Industrial Tribunal-cum-Labour Court as well as the learned Single Judge cannot be faulted with.

As far as the judgment of the Hon'ble Supreme Court is concerned, that was a case where there was no such pleading taken by the Management and it is at that stage that the Court had proceeded to lay down the provisions with regard to the said aspects. In the present case, as we have noticed above, the pleadings are very much there merely the Section applicable was not mentioned.

In the light of the above, finding no merit in the present appeal, we dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

August 17, 2022
pj

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No