

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA-530-2022(O&M)

Date of Decision: 06.07.2022

Jaswinder Singh

... Appellant

VS.

Presiding Officer, Industrial Tribunal,
Chandigarh & Anr.

... Respondents

**CORAM: Hon'ble Mr. Justice Augustine George Masih
Hon'ble Mr. Justice Sandeep Moudgil**

Present: Mr. Anupam Bansal, Advocate for the appellant

Sandeep Moudgil, J.

CM-1212-LPA-2022

For the reasons mentioned in the application which is supported with an affidavit, the delay of 40 days in filing the present appeal is hereby condoned.

CM stands disposed off.

Main case

The instant Letters Patent Appeal is directed against the order dated 18.05.2022 passed by the learned Single Bench in Review application No.RA-CW-83-2022 in CWP-4896-2022 vide which appellant's review application has been dismissed upholding the order dated 24.03.2022 whereby no fault was found in the action of the respondents in engaging another person, who was more suitable and economical, through outsourcing after the completion of contract of the appellant.

Factual matrix leading to the filing of this appeal are that the appellant was appointed to the post of Driver against regular vacancy, on contract basis for a period of six months by the Chief Architect, Department of Urban Planning – respondent No.2, which was being extended from time

depicted in the tabulated form vide Annexure P6. The last extension in service given was from 13.01.2016 to 12.07.2016.

Thereafter, on expiry of the said period, no extension was given after 12.07.2016.

Learned counsel for the appellant vehemently contended that he had worked even after 12.07.2016, as is alleged to have been depicted from the log-book (Ex.WX1), till 16.07.2016.

He further submits that respondent No.2 had directed the appellant to appear for driving test and produced renewed licence for being considered for regular appointment as Driver in pursuance to the regular selection process but despite the appellant successfully appeared in the test, respondent No.2 dispensed with his services on 16.07.2016 without assigning any reason. It is on this grievance, the appellant-workman raised an industrial dispute. The Labour Court, Chandigarh declined the reference vide award dated 24.11.2021 since the appellant could not prove that his services were terminated illegally. Being aggrieved of the award dated 24.11.2021 (Annexure P13), the appellant filed CWP No.4896 of 2022 which too was dismissed vide judgment dated 24.03.2022. The appellant tried his luck before the LPA bench in LPA No.321 of 2022 which was dismissed as withdrawn with liberty to file review application. The review application so filed also met with the same fate and was dismissed vide order dated 18.05.2022. It is these said orders dated 24.03.2022 and 18.05.2022 which are under challenge in the present appeal.

I have heard learned counsel for the appellant and gone through the record.

On consideration of submissions made by the learned counsel for the appellant, the main contention raised is to the effect that his services were terminated without passing any order or issuing any prior notice in relation thereto which is against the provisions of Section 25-F of the Industrial Disputes Act, 1947 along with the fact that the appellant has been replaced with another employee who has also been engaged on outsourcing, which could not have been done as contractual employee can only be replaced by a regular appointee.

It is further submitted that the practice of intentional and deliberate break in service resorted to by the respondent No.2 amounted to unfair trade practice and is against the law laid down by this Court in **Karnal Central Co-op Bank Ltd. vs. State of Haryana & Ors. 1995(2) CLJ (Services) 592** and **Director, Health & Family Welfare, Punjab, Chd. & Ors.vs. Baljinder Singh & Anr. 2006(2) SCT 105.**

All the contentions were dealt with by the learned Single Judge vide judgment dated 24.03.2022 and the grounds taken in this appeal are nothing but repetition. However, the sole ground on which the review is sought was that the learned Single Judge has not taken into consideration the period from 12.07.2016 to 16.07.2016 to say that the services of the appellant were deemed to be extended for the purpose of his contractual appointment since the appellant was asked to perform his duties even after 12.07.2016.

This Court is of the considered view to observe that there is nothing on record to suggest renewal of contract by the authorities which clearly shows that the contract came to an end on 12.07.2016 and as such termination after the non-renewal of contract is not included in the definition of 'retrenchment' as per Section 2(o)(bb) of the Act. The period of 4 days

cannot be read in continuation of the contract which explicitly expired on 12.07.2016 and can, at best, be taken as a separate block of service and as such both the periods of service are of different genre and categories having different causes and legal effects. Reliance placed on Section 25 F,G & H of the Act, is also absolutely irrelevant as the period of 4 days is much less for the purpose of 240 days of service.

We have no doubt to the proposition that the employer is bound to follow the stipulations and conditions prescribed in the Act and as such no fault can be found with the action of respondents in hiring the services of a more suitable and economical person vis-à-vis the appellant, through outsourcing agency.

We, therefore, are fully in agreement with the finding as recorded by learned Single Judge and as such do not find any infirmity or perversity to interfere with the order dated 18.05.2022.

This Letters Patent Appeal, therefore, stands dismissed being devoid of any merit. We, in our judicial wisdom, deem it proper to further observe and comment upon the socio-economic viability of engaging the persons through outsourcing agency and its effect on the unemployed persons, however, it requires to be highlighted that such appointments are only a stop-gap arrangement to fill in the interregnum, till regular appointments are made. In the present case, it cannot be lost sight of the fact that the appellant, who had satisfactorily served the respondent No.2 from 08.06.2012 to 16.07.2016 and had even cleared the driving test but for the objection raised regarding the driving licence, has, all of a sudden, lost his livelihood. The intent of the authorities was that since the process of amendment in the recruitment rules could consume time, so the post of

Drivers were filled up through outsourcing agency and the name of the appellant was not in the list recommended by the said agency.

Keeping in view this aspect, since respondent No.2 is, in the way, to initiate the process for selection of Driver on regular basis, appellant may be allowed to participate and compete in the selection process taking into consideration the length of service rendered by the appellant with the respondent No.2 subject to fulfillment of other statutory requirements.

(Sandeep Moudgil)
Judge

06.07.2022
V.Vishal

(Augustine George Masih)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No