

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

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**CWP No. 10043 of 2016
Date of decision : 18.4.2022**

Devinder Deswal

.....Petitioner

Vs.

**Presiding Officer, Industrial Tribunal-cum-Labour Court-II, UT,
Chandigarh and another**

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. Naveen Chopra, Advocate, for respondent No.2

Rajbir Sehrawat, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari to quash the impugned award dated 26.11.2015 (Annexure P-6), passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Chandigarh, rejecting the claim of the petitioner; without giving any cogent reason.

The brief facts of the case are that the petitioner asserted that he was engaged by the respondent department on contract basis w.e.f. 11.11.1998 and he continued as such, till 19.11.1999. Despite the fact that the petitioner had already completed 240 days, his services were terminated without giving any notice and without payment of any retrenchment compensation. The petitioner had raised the dispute in that regard, which ultimately was referred to the Labour Court. The Labour Court has answered the reference against the petitioner; holding that the appointment of the petitioner had come to an end on

account of non-extension of the contract of service, therefore, the same was not retrenchment within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947 (in short 'the Act'). It is against that award passed by the Labour Court, that the present petition has been filed by the petitioner.

Arguing the case, counsel for the petitioner has submitted that it is even not in dispute that the petitioner worked from 11.11.1998 till 19.11.1999, therefore, the petitioner had completed more than 240 days. Once the petitioner had completed a tenure of 240 days, then the respondent could not have terminated his services except by following the procedure prescribed for retrenching employee, and except by paying the retrenchment compensation. Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **'Devinder Singh v. Municipal Council, Sanaur; (2011) 6 SCC 584'**. Counsel has further submitted that before the Labour Court, the respondent has not even taken the plea regarding the termination being covered under Section 2 (oo) (bb) of the Act. Rather, their plea had been that the department was not covered under the definition of 'Industry'. Hence, the Labour Court has even travelled beyond the pleadings in answering the reference against the petitioner. Further, referring to the statement made by MW1- Ashok Malik, counsel for the petitioner has submitted that the petitioner had summoned the record of the case and the respondent had not produced the same, therefore, the adverse inference has to be drawn against the respondent. Hence, it has to be presumed that the service of the petitioner was wrongly terminated.

On the other hand, counsel for the respondent has submitted that the petitioner had not completed 240 days in 12 calendar months before termination of his service. Still further, it is submitted that the petitioner was

engaged for a duration of three months on three different times in three different projects. Since the projects were of limited duration and the engagement of the petitioner was contractual in nature, specifically meant for three months, therefore, on expiry of the period of three months, the services of the petitioner stood terminated on account of non-renewal of the contract. The case of the petitioner is not covered under the definition of 'retrenchment'. Hence, the Labour Court has not committed any illegality in answering the reference against the petitioner. So far as the evidence led in the case is concerned, it has been submitted by counsel for the respondent that the letters of engagement were placed before the Labour Court, which duly show that the engagement of the petitioner was for a limited period and that was in three different projects. No more record was more material than the above said record. Hence, there is no question of any adverse inference being drawn against the respondent department.

Having heard counsel for the parties, this Court does not find any illegality in the award; as such. It is not even in dispute that the petitioner remained in service with the respondent. Even as per the case of the respondent, the petitioner had completed 240 days of service. However, that service happened to be through separate letters of engagements for specified period. Twice it happened that the fresh letters of engagements were issued to the petitioner for three months after expiry of previous engagement. However, the last letter of engagement specified the duration for 100 days. Thereafter, there was no extension granted to the petitioner. Hence, the case of the petitioner squarely falls under Section 2 (oo) (bb) of the Act. There is no evidence led on the file by the petitioner that even after expiry of the specified

time, under the terms of engagement, the petitioner had completed 240 days. Even if the case of the petitioner is taken as correct, then also, the petitioner completed only 21 days after the expiry of the contractual tenure of specified limited duration. Hence, the petitioner cannot draw any benefit out of that service.

Although counsel for the petitioner has submitted that once the workman completed 240 days in service, then, in any case, the respondent is required to pay the retrenchment compensation, however, this Court does not find any substance in the same. The provisions as contained in Section 25F of the Act, prescribe payment of compensation in case an employee is retrenched by the employer. The term 'retrenchment' has been defined in Section 2 (oo) of the Act. However, the provision as contained in Section 2 (oo) (bb) takes away from the definition of 'retrenchment' all those terminations which happened on account of non-renewal of contract of engagement; or termination of service before the expiry of the contractual period, but under the terms of appointment itself. Hence, it is clear that the termination of service on account of expiry of contractual period or for non-renewal of the contract; does not fall within these definitions of 'retrenchment'. Since the termination covered by Section 2 (oo) (bb) of the Act is not retrenchment, therefore, it would not invite the compliance of provisions as contained in Section 25F of the Act qua payment of compensation. Needless to say, that all the benefits consequent upon the termination of the workman arise only in case the termination is covered under the definition of 'retrenchment'. Unless the termination is 'retrenchment' in terms of the statutory provision, the employer is not required to follow any provisions relating to retrenchment or payment of compensation for any reason

whatsoever. Although counsel for the petitioner has relied upon the judgment of the Supreme Court rendered in **Devinder Singh's case** (supra), however, that case does not help the case of the petitioner, in any manner. The basis in the said judgment of the Supreme Court is that there was no material produced before the Labour Court in that case; to show that the engagement of the workman was for limited period. In the present case, the material is already on the file, which shows that the engagements of the petitioner were for the limited period of three months twice; and the last engagement being specifically for 100 days. Hence, the judgment of the Supreme Court rendered in **Devinder Singh's case** (supra) is distinguishable with reference to the facts of the present case.

Further, counsel for the petitioner has also referred to the statement of MW1- Ashok Malik, to submit that the record was summoned by the petitioner but the same was not produced before the Court. However, the said statement itself shows that the summoned record was duly produced before the Labour Court by the said witness. Although some other records, relating to duration of service of the petitioner for 240 days, were stated to be not produced on the said date when the said witness had appeared, however, that aspect is totally irrelevant in view of the fact that termination of the petitioner has happened on account of expiry of contractual period and non-renewal of contract, as such.

Counsel for the petitioner has also stressed upon the fact that before the Labour Court, the respondent had taken only the averments of the establishment being not an 'industry' and that the workman not completing 240 days; and that the plea regarding applicability of Section 2 (oo) (bb) of the Act

was not taken by them, however, this argument is also not factually correct, besides being irrelevant; in view of the fact that the letters of engagements of the petitioner are already on record and the contents of the same have not even been disputed by the petitioner. Needless to say, that a plea in law can be taken up at any stage before any Court, if otherwise, the same can be substantiated by the material on record.

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

(RAJBIR SEHRAWAT)
JUDGE

18.4.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No