

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
106+221**

**CM-3411-LPA-2019 &
CM-2299-LPA-2018 &
LPA-2095-2017**

Date of Decision: 8th April, 2022

SAROOP SINGH

...APPELLANT

Versus

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, AMRITSAR
AND OTHERS**

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Amarjit Singh, Advocate,
for the appellant.**

**Ms. Monica Chhibber Sharma, Sr. DAG, Punjab,
for the State.**

AUGUSTINE GEORGE MASIH, J.

CM-3411-LPA-2019

C.M. is allowed subject to just exceptions. Additional affidavit of Salwinder Singh, District Education Officer, Amritsar on behalf of respondents No. 2 and 3 is taken on record.

CM-2299-LPA-2018

C.M. is allowed subject to just exceptions. Copy of letter dated 28.04.2014 is taken on record as Annexure A-1.

LPA-2095-2017

Challenge in this appeal is to the judgment dated 29.08.2017 passed by the learned Single Judge, vide which the writ petition preferred by the appellant challenging the Labour Court Award dated 06.04.2015

(Annexure P-6) has been dismissed by holding that the appellant was

appointed as a Mali by the Parents Teacher Association headed by Head Mistress, Govt. High School, Chattiwind, Amritsar-respondent No. 2 and was further appointed as a Chowkidar from the funds of the Parents Teacher Association upholding the Award of the Labour Court in granting compensation of ₹40,000/- as the termination of the appellant was found to be in violation of the provisions of the Industrial Disputes Act but he could not be reinstated in service in the light of the fact that the post, on which the appellant was initially working, had been filled by way of appointment of a regular employee.

2. It is the contention of the learned counsel for the appellant that the appellant was appointed as a Mali vide Resolution No. 29 of the Parents Teacher Association in its meeting held on 01.08.1997. It was also resolved that the salary of the appellant would be paid out of the Parents Teacher Association fund. Thereafter, vide Resolution No. 34 passed by the Parents Teacher Association, appellant was appointed as a Chowkidar in its meeting on 03.04.2001. He contends that although the appellant was appointed in pursuance to the resolution passed by the Parents Teacher Association but the posting orders were issued by the Head Mistress, Govt. High School, Chattiwind, Amritsar-respondent No. 2 in the Order Book on 10.01.2006 (Annexure P-4 Colly.). His services were terminated on 02.01.2007 without any notice, charge-sheet or compensation after 9 years and 5 months of continuous service initially as a Mali on 01.08.1997 and as a Chowkidar on 03.04.2001 onwards till his termination without any break.

3. The Award dated 06.04.2015 (Annexure P-6), which has been passed by the Labour Court, indicates that the services of the appellant had been terminated without complying with the mandatory provisions of the

Industrial Disputes Act and it is for this reason only that the compensation amount of ₹40,000/- has been ordered to be paid along with interest @ 9% per annum from the date of demand notice i.e. 21.05.2007 till realization. He contends that once the Labour Court had come to a conclusion that the appellant had been working with the respondents for more than 9 years without any break, his reinstatement was required to be ordered especially when the witnesses of the Management have themselves admitted that the appellant had been performing his duties honestly and diligently. There was nothing adverse against the work or conduct of the appellant which would disentitle him to reinstatement in service and, therefore, the denial of the reinstatement of the appellant by the Labour Court is unsustainable. Prayer has, thus, been made for setting aside the order passed by the learned Single Judge as also the Labour Court and in any case, for enhancement of the amount of compensation, in case reinstatement is not to be granted to the appellant.

4. On the other hand, learned Senior Deputy Advocate General, Punjab, has pointed out that the appointment of the appellant was purely a stop-gap arrangement. Referring to the resolution, in pursuance of which the appellant had been appointed, she has contended that the appointment of the appellant was made firstly, without holding a regular selection, secondly, it was on a resolution which was passed by the Parents Teacher Association where it was clearly mentioned that the appointment as a Mali as well as the subsequent appointment as a Chowkidar was until a regular incumbent joins and thirdly, the payment was to be made from the funds of the Parents Teacher Association. There is no semblance of appointment of the appellant as a regular employee. His services have been terminated

because of the joining of a regular employee who had been appointed by the competent authority. In the absence of there being a vacant post available, reinstatement of the appellant has rightly been denied by the Labour Court and adequate compensation has been granted to him. She, therefore, prays that the present appeal deserves to be dismissed.

5. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case.

6. The facts are not in dispute and, therefore, need not be again referred to except for pointing out that the resolution, which has been placed on record, clearly indicates that the appointment of the appellant initially, as a Mali and thereafter, as a Chowkidar is not made by a competent authority but on the basis of the resolution passed by the Parents Teacher Association, wherein it has been specifically mentioned that the appointment is being made because of the non-availability of a regular employee and the said appointment was up to the period, a regular employee joins the post. In the said resolution, it has clearly been mentioned that the salary will be paid from the funds of the Parents Teacher Association, meaning thereby that no Government funds were used for disbursement of the wages/salary.

7. It is also not in dispute that on the joining of the regular employee through a process, which is recognized in law for appointment on such regular post, there was no vacant post, against which the appellant could be continued. The resolution, which has been passed by the Parents Teacher Association, was in the form of an offer to the appellant which had been accepted by him and in the said terms and conditions of appointment, one of the conditions was that his appointment was limited to the period of

joining of the regular incumbent on the post of either the Mali or the Chowkidar. Once the regular incumbent had joined the post, the appellant had no right to continue on the said post and accordingly, his services were terminated.

8. The Labour Court was right in not granting reinstatement to the appellant in service and, therefore, resorted to grant him compensation for the period he had worked with the respondents as it is an admitted position that no compensation amount was paid to him at the time of his termination. The compensation, which has been granted to the appellant, in our considered view, especially in the light of the fact that he had been drawing a salary of ₹300/- per month as a Mali and thereafter, ₹1200/- per month as a Chowkidar, is justified. The amount of compensation of ₹40,000/- with interest @ 9% per annum from the date of demand notice till realization, as has been granted by the Labour Court, being justified does not call for any enhancement thereof.

9. In the light of the above, finding no ground to interfere in the order passed by the learned Single Judge as well as the Award passed by the Labour Court, we dismiss the present appeal.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(SANDEEP MOUDGIL)
JUDGE**

8th April, 2022
pj

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