

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1456 of 2018(O&M)

Date of decision: 04.05.2022

Swami Divyanand Polytechnic College for EngineeringAppellant

Versus

Barkha Ram and anotherRespondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ajay Kalra, Advocate for the appellant.

Mr. J.S. Cooner, Advocate for the respondents.

SANDEEP MOUDGIL, J.

CM-3932-LPA-2018

This is an application under Section 5 of the Limitation Act for condoning the delay of 250 days in filing the appeal.

2. For the reasons stated in the application, same is allowed.

Delay of 250 days in filing the appeal is condoned.

CM-3931-LPA-2018

This is an application under Section 151 CPC for exemption from filing certified/original copies of Civil Writ Petition, Review Application, Annexures, written statement, replies and also the certified copies of impugned orders dated 01.12.2017 and 10.08.2018.

2. For the reasons stated in the application, same is allowed

CM-3934-LPA-2018

This is an application under Section 151 CPC for placing on record copy of writ petition, review application as well as Annexures.

2. For the reasons stated in the application, same is allowed, with just exceptions.

LPA-1456-2018(O&M)

In the instant intra-court appeal, the appellant has challenged the order dated 01.12.2017, passed by the learned Single Bench in CWP No.17287 of 2012 and the order dated 10.08.2012 passed in RA-CW-194 of 2018 in the above CWP.

2. The facts pleaded herein are that respondent No.1 joined the appellant College as Smith Forging Instructor on 14.08.2008 in pursuance to an advertisement, followed by an interview in the office of Management. Though the work and conduct of respondent No.1 was satisfactory and there was no complaint of any kind whatsoever against him, his services were terminated on 30.11.2009. Respondent No.1 raised an Industrial dispute, in pursuance to Reference dated 14.07.2010. The Labour Court vide its Award dated 14.03.2012, partly allowed the Reference by holding the respondent -No.1 workman to be entitled for salary w.e.f. 01.11.2009 to 13.11.2009.

3. The respondent No.1 challenged the Award dated 14.03.2012 before the learned Single Bench by way of CWP No.17287 of 2012. Vide

impugned order dated 01.12.2017, the learned Single Judge had ordered setting of the Award of the Labour Court dated 14.03.2012, holding the petitioner entitled for reinstatement with 50% back wages. The validity of the order dated 01.12.2017, passed by the learned Single Judge was also questioned by way of Review Application No.194 of 2018, though it also met the same fate and resultantly was dismissed vide order dated 10.08.2018, that is how, the present appeal is before this court, impugning the order dated 01.12.2017 as well as the order dated 10.08.2018, passed in Review Application.

4. Learned counsel for the appellant has vehemently contended that the respondent No.1 was appointed under a contract and as such, was not entitled for reinstatement. It has been further asserted that the burden to prove the entitlement for back wages was upon respondent No.1 and in the absence of the same having been discharged, respondent No.1 could not have been granted the benefit of back wages.

5. On the other hand, learned counsel for respondent No.1 submitted that the notice dated 13.11.2009 (Annexure R-1) by the appellant – Institution was issued with certain allegations without holding enquiry, w.e.f 30.11.2009 and it was actually given effect. It is also argued on behalf of the respondent No.1 – Workman that he was appointed on regular basis and therefore, the appellant – Institution ought to have complied with the principle of natural justice if there were any kind of

for respondent no.1 contended that reasons recorded by the learned Single Judge are based on facts and law applicable thereto and thus, no interference is called for.

6. Having heard learned counsel for the parties and after going through the records of the writ petition as well as the impugned orders dated 01.12.2017 and 10.08.2018, passed by the learned Single Judge, we find no merit in the present appeal.

7. The first contention raised by learned counsel for the appellant to the effect that the respondent No.1 being appointed on contract, could not have asked for holding of an enquiry before his termination. In this regard, the learned Single Judge has very categorically recorded that respondent No.1 was regularly appointed to the post of Smith Forging Instructor and once allegations were made against him in the termination-cum-notice, the domestic enquiry was required to be held. In addition, no document has been produced on record in support of the contention so raised by the appellant regarding the nature of appointment of respondent No.1.

8. Further, on the issue of grant of back wages/compensation to respondent No.1, having held the nature of appointment to be regular and in that eventuality the termination of respondent No.1 is illegal, as a natural consequence particularly for violating the principles of natural justice, the reinstatement with continuity of service and payment of back wages, were

9. We, therefore, in our considered view after having discussed the facts and circumstances supported by material on record, do not find any reason whatsoever to interfere with the orders dated 01.12.2017 and 10.08.2018 passed by the learned Single Judge, which are just and legal.

10. Hence, the appeal being devoid of merit, is ordered to be dismissed.

11. With the dismissal of main appeal, the question for stay of orders dated 01.12.2017 and 10.08.2018 does not survive. Accordingly, stay application No.CM-3933-LPA-2018 stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

04.05.2022

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Whether speaking/reasoned Yes

Whether reportable No