

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

(217)

LPA-329-2018 (O&M)
Date of Decision:-07.09.2022.

The Block Education Officer, Hisar-II, Mohalla Rampura Hisar, District
Hisar and another

.....Appellants

Versus

Maman Ram and another

.....Respondents

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

Present: Mr. Deepak Bhardwaj, DAG, Haryana.

Mr. T.C. Dhanwal, Advocate for respondent-workman.

AUGUSTINE GEORGE MASIH, J. (Oral)

CM-809-LPA-2018

Prayer in this application is for exemption from filing of certified copies of civil writ petition, written statements, affidavit and Annexures as well as from filing of typed copies of civil writ petition along with its Annexures, written statement and judgment dated 11.08.2017 passed by the learned Single Judge.

For the reasons mentioned in the application, the same is allowed and exemption is granted as prayed for.

CM-810-LPA-2018

Prayer in this application is for condonation of delay of 155 days in re-filing the appeal.

Perusal of the application indicates that the reasons mentioned

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therein appear to be plausible and justified, delay on the part of the appellants being *bona fide*. The application is supported by the affidavit of the Block Education Officer, Adampur, District Hisar.

In the light of the above, the prayer made in this application is allowed and delay of 155 days in re-filing the appeal stands condoned.

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Challenge in this appeal is to the judgment passed by the learned Single Judge dated 11.08.2017, whereby, the learned Single Judge has, on a writ petition preferred by respondent No.1 challenging the validity of the Award dated 23.04.2010, allowed by setting aside the Award on the ground that the respondent-workman was appointed as a Water Carrier on 09.12.1998 and his services were terminated on 28.02.2003. It was stated in the order that the post of Water Carrier is provided for in the Statutory Rules and, therefore, he having worked with respondents (appellants herein) on the said post for a period of more than 240 days in each calendar year, was entitled to the benefit of the Industrial Disputes Act, 1947. It was further stated that he was working against a post which was provided for under the Haryana State Secondary Education Field Offices (Group-D) Service Rules, 1998 and was, thus, entitled to the protection of the said Statutory Rules. In case the services of the respondent-workman had to be terminated, the requirement of following the Haryana Civil Services (Punishment & Appeal) Rules, 1987, was mandatory. Since no disciplinary proceedings were initiated, the termination of the respondent-workman was unsustainable. On this ground, the Award had been set aside and the respondent-workman has been ordered to be reinstated in service with all

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consequential benefits from the date of termination till reinstatement, with a further direction to reinstate him within a period of two weeks from the date of the order.

It is the contention of the learned counsel for the appellants that the appointment of the respondent-workman was on contractual basis for a period of 10 months for each year. Sanction was granted by the competent authority for the above specified period. After the completion of the term, the services of the respondent-workman were dispensed with and in the subsequent year again the same process was followed. It is contended that the need of the Water Carrier in the School was felt for the reason that there was no running water supply to the school and the Water Carrier used to bring water in the school for being used in the school for distributing and serving the students and the staff. It has been contended that due to the instructions which have been received from the competent authority vide letter dated 17.09.2002, the running water supply having been provided to the school, need for continuing with the post of Water Carrier was not found to be essential and, therefore, for the subsequent year, after the work period of the respondent-workman had come to an end on 28.02.2003, no further contract was granted to him. On this basis, it is contended that it being a pure contractual appointment and that too for a fixed term, as per the provisions of the Industrial Disputes Act, 1947, specially Section 2 (oo) (bb), it would not amount to retrenchment and, therefore, the Labour Court has rightly proceeded to decline the reference and decided the same against the respondent-workman. Counsel for the appellants, on this basis contends, that the order, as has been passed by the learned Single Judge, cannot

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sustain specially in the light of the fact that the appointment of the respondent-workman was neither as per the Statutory Rules nor on the sanctioned post but was limited to the extent of contractual appointment, for which sanction was granted every year from the competent authority. Prayer has, thus, been made for setting aside the impugned judgment of the learned Single Judge and for dismissal of the writ petition.

On the other hand, learned counsel for respondent No.1-workman has contended that the fact with regard to the respondent-workman having worked with the appellants from 09.12.1998 till 28.02.2003 has not been disputed, rather in the statement before the Labour Court, it has been admitted by the Head Master that the respondent-workman had been working continuously for the said period, although at a subsequent stage, it has been mentioned that it was on an year to year basis. He, on this basis, contends that since the post was available under the Statutory Rules and the respondent-workman had been continuously working with the appellants, the learned Single Judge has rightly proceeded to consider the appointment of the respondent-workman under the Statutory Rules granting him protection thereof. None of the Rules, as has been provided for under the Haryana Civil Services (Punishment & Appeal) Rules, 1987, have been followed, as no charge-sheet has been issued nor any departmental inquiry held against the petitioner. The termination of respondent-workman is violative of the Industrial Disputes Act, 1947, as it is admitted that he had completed more than 240 days in each calendar year. No compensation had been granted at the time of termination of the services of the respondent-workman. Therefore, the order passed by the

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learned Single Judge, being in accordance with law, do not call for any interference.

Having considered the submissions made by the counsel for the parties, and on going through the pleadings, we are unable to accept the submissions of the counsel for the respondent-workman. The judgment passed by the learned Single Judge which is impugned herein, is based on the premise that merely because a sanctioned post under the Rules is available and the respondent-workman has worked as a Water Carrier would not be enough for bringing it within the ambit of the Statutory Rules. Had the appointment been made in accordance with the Statutory Rules after following the mandate of the said Rules, the judgment as passed by the learned Single Judge would be fully justified. That apart, it has come on record and is not in dispute that each year, the appointment had been issued to the respondent-workman for a period of 10 months which was sanctioned every time separately by the competent authority. It was not a continuous appointment all through. Merely because he has been appointed on a fixed term on an year to year basis would not entitle him to the benefit of the Statutory Rules. Similarly, keeping in view the fact that the appointment of the respondent-workman was for a fixed term and that too on contractual basis, the provisions of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 stands attracted. Since the appointment being of a tenure appointment, the termination thereof would not attract the provisions of the Industrial Disputes Act, 1947. The termination, therefore, of the services of the respondent-workman cannot be said to be in violation of Industrial Disputes Act, 1947.

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In the light of the above, we accept the present appeal and set aside the order dated 11.08.2017 passed by the learned Single Judge. The writ petition, as preferred by the respondent-workman, stands dismissed.

CM-811-LPA-2018

In view of the disposal of the main appeal, the present application does not survive for consideration and the same is disposed of as such.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(ALOK JAIN)
JUDGE**

September 07, 2022.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No