IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 22.09.2022

(1)

LPA No.2005 of 2019 (O&M)

RITES Limited

....Appellant

Versus

Md. Iqbal and others

....Respondents

(2)

LPA No.2006 of 2019 (O&M)

RITES Limited

....Appellant

Versus

Bansi Lal and others

....Respondents

(3)

LPA No.6 of 2020 (O&M)

RITES Limited

....Appellant

Versus

Satbir and others

....Respondents

(4)

LPA No.135 of 2020 (O&M)

RITES Limited

....Appellant

Versus

Sanjay Kumar and others

....Respondents

(5)

LPA No.142 of 2020 (O&M)

RITES Limited

....Appellant

Versus

Ram Milan and others

....Respondents

(6)

LPA No.143 of 2020 (O&M)

RITES India Limited

....Appellant

Versus

Sunil Kumar and others

....Respondents

(7)

LPA No.144 of 2020 (O&M)

RITES Limited

....Appellant

Versus

Devi Singh and others

....Respondents

(8)

LPA No.1067 of 2021 (O&M)

RITES India Limited

....Appellant

Versus

Rama and others

....Respondents

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

Present: Mr. Rajiv Sharma, Advocate
for the appellant in all cases.

Ms.Abha Rathore, Advocate
for respondent No.1 – Workmen in all cases.

Mr.Paul S. Saini, Advocate & Mr. Vipul Sharma, Advocate
for respondent No.2 – Indian Oil Corporation in all cases.

None for respondent No.3.

Mr. Abhinav Kalia, Advocate
for respondent No.4 – M/s K. Lal & Sons in all cases.

AUGUSTINE GEORGE MASIH, J.

CM-2469-LPA-2021 IN LPA No.1067 of 2021

Prayer in this application is for condonation of delay of 57 days in re-filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit of the Clerk of the counsel, the delay of 57 days in re-filing the appeal stands condoned.

The application stands allowed.

Main appeals

By this order, we propose to dispose of eight appeals i.e. LPA Nos.2005 & 2006 of 2019; LPA No.6, 135, 142, 143 & 144 of 2020; and LPA No.1067 of 2021, wherein challenge is to the judgment passed by the learned Single Judge dated 24.07.2019, whereby the award dated 08.07.2016 passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh, has been modified to the extent of ordering reinstatement of the respondent – workmen in service with continuity thereof and full back-wages leaving it further open to the workmen to take out appropriate proceedings under Section 29 of the Industrial Disputes Act, 1947 for violation of the settlement dated 10.04.2012 entered into between the Management of M/s Peeway Care, appellant – RITES Ltd. and the Oil & Refinery Workers Union under Section 12(3) read with Section 18 (3) of the Industrial Disputes Act, 1947.

Briefly, the facts are that the respondent – workmen were appointed in the different years by respondent No.3 – M/s Peeway Care which was a sub-contractor of the appellant – RITES Ltd., who had been given a contract by the Indian Oil Corporation Limited, Panipat – respondent No.2, as a contractor of Maintenance of Railway Riding Panipat Refinery from 1999 onwards. The workmen were engaged as unskilled labour on the post of Gangman and continued as such till their services were retrenched w.e.f. 01.11.2012 without payment of retrenchment compensation or any notice. The factum that the workmen had worked for the period as claimed by them continuously has not been disputed, however, the stand of the appellant and respondent No.2 – Indian Oil Corporation Ltd. was that the contract had come to an end with M/s RITES Ltd., the appellant herein and therefore, they could not continue the workmen to work with them. Workmen asserted that even if the contract has come to an end, they were required to be continued in service as RITES Ltd. continue to hold the contract and had merely engaged a new sub-contractor i.e. M/s K. Lal & Sons – respondent No.4 instead of M/s Peeway Care and thus, they cannot be retrenched. This, they asserted on the basis of the settlement entered into between the Oil & Refinery Workers Union, Indian Oil Corporation and the appellant on 10.04.2012, according to which till such time the maintenance contract remained with the appellant, it would ensure that no new workman is appointed in place of the existing workmen till the date of retirement/resignation. With the sub-contractor having come into place, the agreement being between the appellant and the workmen, the appellant would be bound by the said agreement and therefore, M/s K. Lal & Sons could not insist upon a fresh contract to be entered into by granting them new engagement.

The factum of non-payment of any retrenchment compensation had been admitted, however, it has been asserted by the appellant and the Indian Oil Corporation Ltd. that the workmen were offered the amount of retrenchment and further that they had been paid the gratuity by M/s Peeway Care. The Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh, had proceeded to hold that since the contract of the appellant with M/s Peeway Care had come to an end, therefore, the workmen were not entitled to reinstatement in service or continuity thereof and thus, had granted them a lump sum compensation amount of Rs.50,000/- per workman which has been assailed by the workmen in the writ petitions which they preferred before this Court.

Learned counsel for the appellant contends that since an offer had been made for payment of the compensation amount and they having not accepted the said offer, no benefit under the Industrial Disputes Act, 1947 would accrue to them. Another aspect which has been pressed into service by the counsel for the appellant is that once the employer i.e. M/s Peeway Care had ceased to be a sub-contractor of the appellant, the workmen had no right to continue in service and in any case, the appellant was not liable to pay any retrenchment compensation. Liability, if any, was that of M/s Peeway Care, the sub-contractor, who had engaged the respondent – workmen. Apart from this, learned counsel for the appellant has pointed out that since the contract between the appellant and the Indian Oil Corporation had come to an end on 31.12.2018, the order of reinstatement directing to reinstate the workmen in service with continuity thereof and full back-wages by the learned Single Judge vide judgment dated 24.07.2019 cannot sustain and therefore, the impugned judgment deserves to be set aside.

On the other hand, learned counsel for the respondent – workmen, has asserted that the said factum of the coming to an end of the works contract between the appellant and the respondent – Indian Oil Corporation Ltd. was not brought to the notice of the learned Single Judge. This fact when confirmed from the Indian Oil Corporation Ltd., the said aspect was found to be correct. She, in the light of the above, contends that even if the sub-contractor has ceased to operate with M/s Peeway Care, but the maintenance contract of Railway Riding Panipat Refinery work still continued with the appellant – RITES Ltd. which was a contractor for annual maintenance. The agreement as has been entered into between the Oil & Refinery Workers Union and the appellant – RITES Ltd., dated 10.04.2012, makes it amply clear that till the time, the maintenance contract in question is with RITES Ltd., it shall ensure that no new workman in place of the present workmen is appointed till the date of retirement/resignation. The said settlement has not been disputed. Even if the initial engagement of the respondent – workmen was by M/s Peeway Care but since the contract with RITES Ltd. continued, merely because a sub-contractor has stepped in on 01.11.2012, the services of the workmen could not be dispensed with or they could not have been offered appointment as fresh employees. She, on this basis, contends that the award as has been challenged by the workmen has rightly been modified by the learned Single Judge. The counsel, however, could not support the continuity in service and full back-wages beyond the date of termination of the contract between the Indian Oil Corporation Ltd. and the appellant – RITES Ltd. i.e. 31.12.2018 as it is an admitted position that no further work/contract was awarded to the appellant – M/s RITES Ltd. by the Indian Oil Corporation Ltd.

We have considered the submissions made by the learned counsel for the parties and keeping in view the undisputed facts as recorded above, we do not find any illegality in the judgment passed by the learned Single Judge with regard to the factum that the workmen were entitled to continue in service till the works contract remained with the appellant – M/s RITES Ltd. Merely because the sub-contractor has changed, would not deny the workmen the continuity in service. The offer of new and fresh appointment, therefore, made by M/s K. Lal & Sons has rightly been held to be not sustainable in view of the settlement dated 10.04.2012 entered into between the Management of the appellant, M/s Peeway Care and the Oil & Refinery Workers Union under the Industrial Disputes Act. The only interference, if any, which is required to be made in the impugned order dated 24.07.2019 passed the learned Single Judge is limited to the extent that the workmen would be entitled to continuity in service and full back-wages till the termination of the contract between the

Indian Oil Corporation Ltd. and the appellant – RITES Ltd. i.e. 31.12.2018. The respondent – workmen would, therefore, be entitled to continuity of service with full back-wages till 31.12.2018 and thereafter, all benefits under the Industrial Disputes Act, 1947 as applicable, which includes retrenchment compensation etc.

These appeals stand disposed of accordingly. It goes without saying that the amount, if any, disbursed to the respondent – workmen on a particular head would be adjustable in the final amount as may be assessed.

All the pending misc. applications in these appeals stand disposed of accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

22.09.2022
Harish

(ALOK JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No