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

CWP-12623-1994

Date of Decision: 2nd November, 2023

Mukhtiar Singh

..... Petitioner

Versus

Presiding Officer, Labour Court, Patiala and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Kanav Bansal, Advocate and
Mr. Arun Gupta, Advocate
for the petitioner.

Mr. Anil Kumar Sharma, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Petitioner (Mukhtiar Singh) has filed the present petition under Articles 226 and 227 of the Constitution of India seeking quashing of impugned award dated 01.09.1993 (Annexure P-6) passed by the Presiding Officer, Labour Court, Patiala, whereby the petitioner-workman was held not entitled to any relief. A further prayer has been made for directing

respondent No.2 (P.E.P.S.U. Roadways Transport Corporation, Patiala) to re-employ the petitioner from the date on which fresh drivers had been employed after the termination of services of the petitioner.

2. Briefly, the petitioner-workman (Mukhtiar Singh) raised an industrial dispute regarding termination of his services by serving a demand notice upon respondent No.2-Corporation, which was referred for adjudication to the Labour Court, Patiala under Section 10(2)(c) of the Industrial Disputes Act, 1947 (hereafter referred to as '1947 Act').

3. In the statement of claim, the petitioner-workman claimed that he had put in more than one year of service under respondent No.2-Corporation as a Driver and was drawing salary of Rs.1,354/- per month by way of wages, however, his services were wrongly terminated on 22.07.1988 without issuance of any prior notice or charge-sheet or conducting any inquiry or payment of compensation to him, and accordingly, the petitioner-workman claimed reinstatement with continuity of service and full back wages.

4. The aforesaid claim of the petitioner-workman was opposed by respondent No.2-Corporation by filing its written statement, wherein it was categorically stated that the petitioner-workman was initially appointed on 25.02.1988 on *ad hoc* basis for a period of 89 days and the said period was later on extended till 08.08.1988. It was the specific stand of respondent No.2-Corporation that the services of petitioner-workman were not terminated on 22.07.1988, as claimed by him. It was further stated that the petitioner-workman had not rendered 240 days of service with respondent No.2-Corporation, and hence he was not entitled to any relief.

5. From the pleadings, issues were framed and the evidence was led by the respective parties.

6. Upon appreciation of the evidence/material available on record, the Labour Court, Patiala vide impugned award dated 01.09.1993 (Annexure P-6) held that the petitioner-workman was not entitled to any relief.

7. Against the aforesaid award, the petitioner approached this Court by way of filing the instant writ petition. A perusal of the paper book reveals that earlier this writ petition was decided by this Court vide order dated 09.10.2013, whereby it was held that the services of petitioner had been terminated in clear violation of Sections 25-G and 25-H of the 1947 Act, and accordingly, the termination order as well as the impugned award was quashed; and it was directed that the petitioner-workman be reinstated in service with a further direction to respondent No.2 to pay 50% of the back wages to petitioner-workman.

8. It appears that the aforesaid order dated 09.10.2013 passed by the learned Single Judge was challenged by respondent No.2-Corporation by way of filing L.P.A No.750 of 2014, which came to be allowed by a Division Bench of this Court vide order dated 04.09.2018; whereby order dated 09.10.2013 passed by the Single Judge was set aside and the matter was remitted to this Court for fresh adjudication of the instant writ petition.

9. In the aforesaid circumstances, the present case has come up before this Court.

10. Learned counsel for the petitioner contends that the Labour Court, Patiala has committed a grave error by holding that the provisions of

Section 25-H of the 1947 Act was not applicable in the instant case as the petitioner-workman was not retrenched on 22.07.1988 but was relieved on expiry of the specified period. It is submitted that in terms of the definition of 'retrenchment' as contained in Section 2(oo) of the 1947 Act, termination of services of the petitioner-workman ought to have been held to be retrenched and petitioner was entitled for the relief under Sections 25-G and 25-H of the 1947 Act. It is further submitted by learned counsel for the petitioner that as per Appointment Letter (Annexure P-1), the petitioner-workman was appointed on 25.02.1988 for a period of 89 days, which was to expire on 24.05.1988, however, after expiry of the said period, no further period was specified by respondent No.2-Corporation, accordingly, the Labour Court below has wrongly held that the petitioner was terminated on account of non-renewal of his contract of service upon expiry of the specified period of employment, and therefore, the provisions of Section 2(oo) (bb) of the 1947 Act are not attracted in this case. It is further contended that since the juniors of petitioner were retained and after termination of services of the petitioner, other drivers had been employed, accordingly, there was a clear violation of Section 25-H of the 1947 Act as the petitioner had a prior right of employment. It is, therefore, submitted that the termination of services of the petitioner was bad in the eyes of law as well as in violation of the provisions of Sections 25-G and 25-H of the 1947 Act and accordingly, the termination order is liable to be set aside and the impugned award is also liable to be quashed to that extent with a further direction to reinstate the petitioner with all consequential benefits.

11. The aforesaid contentions of the petitioner-workman has been

opposed by learned counsel for respondent No.2-Corporation. It is submitted that the petitioner joined the Corporation on 25.02.1988 on *ad hoc* basis for a period of 89 days only; and he was appointed purely on temporary basis and was never a regular employee of respondent No.2-Corporation. It is the stand of respondent No.2-Corporation that the petitioner-workman was on duty till 16.07.1988 and was given routine rest from 17.07.1988 up to 21.07.1988, however, he never joined his duties thereafter and accordingly vide impugned order dated 08.08.1988 (Annexure P-3), services of the petitioner were dispensed with as not required w.e.f. 22.07.1988. As regards Annexure P-2, it is submitted that the same was not an appointment order but was only a recommendation by the Depot Manager, P.E.P.S.U. Road Transport Corporation, Ludhiana to the Appointing Authority on the basis of performance of the petitioner. As regards the statement of Sh. Manohar Lal (MW-1), Superintendent, P.R.T.C., it is submitted by learned counsel for respondent No.2-Corporation that it nowhere depicts that the juniors to petitioner were regularized and it simply mentions about the *ad hoc* appointments of other employees. It is stated that the petitioner-workman had failed to prove on record any violation of Section 25-H of the 1947 Act. It is also contended that Section 2(oo) (bb) of the 1947 Act excludes the applicability of Sections 25-G and 25-H of the 1947 Act. While referring to paragraph No.12 of the short reply filed on behalf of respondent No.2, it is submitted that the services of petitioner were extended vide order dated 10.06.1988, wherein it was clearly mentioned that his services were extended up to 30.06.1988 on the same terms and conditions. The relevant extract of the

aforesaid paragraph No.12 of the short reply filed by respondent No.2, reads as under:-

“12. That even in the order dated 10.06.1988 extending the services of the petitioner it clearly finds mention in the same that the services were extended upto 30.06.1988 on the same terms and conditions and the relevant portion on translation reads as under:

::: Pepsu Road Transport Corporation, Ludhiana :::

No.382/PRTC/Admn.

Dated 10-6-88

Order

In compliance of Head Office memo No. 2332/PRTC/Admn. dated 2.5.88, the service period of the following ad-hoc temporary staff whose period of service have come to an end on 31.3.88 is hereby extended up to 30.6.88 on the same terms and conditions.

Sr. Name & Designation

1. Nazar Mohd. Cond. No.L-21

2. xxxxxxxxxxxx 14.

15. Mukhtiar Singh Driver No. L-35

Depot Manager

Endst No. 1585/PRTC/Admn.

Dated:- 10-6-88

Copy to:-

1. Serial No. 1 to 15 as above officials

2. SO/Asstt. Bills/DT/TM/SS for information

and necessary action.

Depot Manager

Pepsu Road Transport Corporation

Ludhiana”

12. With the aforesaid submissions, learned counsel for respondent No.2-Corporation has prayed for dismissal of the instant writ petition.

13. I have heard learned counsel for the parties and perused the

paper book with their able assistance.

14. Concededly, the petitioner-workman was appointed as a Driver by respondent No.2-Corporation for a period of 89 days vide Appointment Letter dated 25.02.1988 (Annexure P-1), which reads as under:-

“ *Pepsu Road Transport Corporation Ludhiana*
No. 2675/PRTC/Admn. *Dated: 25.2.88*

ORDER

In compliance of the instructions conveyed by the Head Office vide memorandum No. 24530/PRTC/Admn. dated 12.2.88, Shri Mukhtiar Singh S/o Shri Karnail Singh V & P.O. Kahangarh, Distt. Bhatinda is hereby appointed as Driver on adhoc basis for 89 days in the pay scale of Rs. 450-15-525/15-600/20-700 with immediate effect.

He is allotted Driver No. L-35.

His services are liable to be terminated at any time without giving any notice or assigning any reasons.

The appointment is strictly subject to verification of his character and antecedents by the police authorities.

*Depot Manager,
Sd/-*

Endst. No.7694/PRTC/Admn. *Dated: 25.2.88*

*Copy to:
xxxx xxxx*

*Sd/-
Depot Manager
Pepsu Road Transport Corporation
Ludhiana”*

15. It appears that vide letter dated 30.05.1988 (Annexure P-2), the period of employment was recommended to be extended. A perusal of paragraph No.12 of the short reply filed on behalf of respondent No.2-Corporation would further indicate that the service period of petitioner

was extended up to 30.06.1988 vide order dated 10.06.1988 on the same

terms and conditions. The services of petitioner were terminated on 08.08.1988 (Annexure P-3), though w.e.f. 22.07.1988. The relevant extract thereof reads as under:-

*“PEPSU ROAD TRANSPORT CORPORATION, LUDHIANA

 No. 616/PRTC/Admn. Dated: 8/8/88*

“ORDER”

Having served up to 22.7.88 Shri Mukhtiar Singh, driver No. L-35 shall be paid his wages accordingly. His services are no more required.

*Sd/-
 Depot Manager*

Endst. No. 2974/PRTC/Admn. Dated: 8/8/88

*Copy to:
 1. Shri Mukhtiar Singh Driver No.L-35.
 2. & 3. xxxx xxxx*

*Sd/-
 Depot Manager
 Pepsu Road Transport Corporation
 Ludhiana”*

16. In the case of ***Escorts Limited v. Presiding Officer, 1997(11) SCC521***, Hon'ble Supreme Court observed as under: -

“4. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because, in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) in Section 2(oo) of the Act. Clause (bb) excludes from the ambit of the expression "retrenchment" as defined in the main part of Section 2(oo) "termination of the services of the workman as a result of the non-renewal of the contract of employment

*between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein". The said provision has been considered by this Court in **M. Venugopal v. Divisional Manager, LIC, (1994) 2 SCC 323** . The appellant in that case had been appointed on probation for a period of one year from 23-5-1984 to 22-5-1985 and the said period of probation was extended for further period of one year from 23-5-1985 to 22-5-1986. Before the expiry of the said period of probation, his services were terminated on 9-5-1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of Section [2\(oo\)\(bb\)](#) of the Act and did not constitute retrenchment. Here also the services of the workman were terminated on 13-2-1987, as per the terms of the contract of employment contained in the appointment letter dated 9-1-1987 which enabled the appellant to terminate the services of the workman at any stage without assigning any reason. Since the services of the workman were terminated as per the terms of the contract of employment, it does not amount to retrenchment under Section [2\(oo\)](#) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by Sections [25F](#) and [25G](#) of the Act..."*

17. In **Harmohinder Singh v. Kharga Canteen, Ambala Cantt., 2001(3) SCT758**, Hon'ble Supreme Court observed as under: -

"15. The argument on the basis of Section [25F](#) is equally misconceived. This section deals with conditions precedent to retrenchment of workmen. It would not apply to para 3A because of the definition of retrenchment in Section [2\(oo\)\(bb\)](#) which expressly excludes "termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman

*concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained thereon." Contracts of service for a fixed term are, therefore, excluded. This Court in Uptron's case (supra) has also held that the principles of natural justice are not applicable where the termination takes place on the expiry of the contract. The decision of a Learned Single Judge of the Punjab and Haryana High Court in **Barbir Singh v. Kurukshetra Central Cooperative Bank Ltd., 1990(1) LLJ 1990** to the extent that it holds to the contrary is erroneous..."*

18. In **Municipal Council, Samrala v. Raj Kumar, 2006(3) SCC 81**, Hon'ble Supreme Court examined the nature and scope of section 2(oo)(bb) and observed as under:-

"9. Section 2(oo)(bb) of the Industrial Disputes Act reads as under:

"2. Definitions. In this Act, unless there is anything repugnant in the subject or context,

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include?

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

10. Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service

of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf. The learned Presiding Officer of the Labour Court as also the High Court arrived at their respective findings upon taking into consideration the first part of Section 2(oo)(bb) and not the second part thereof. The circumstances in which the respondent came to be appointed have been noticed by us hereinbefore.

11. The appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of employees as also the terms and conditions of their services indisputably are governed by the provisions of the relevant Municipal Act and/or the rules framed thereunder. Furthermore, there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorised therefor. The agenda in question was placed before the Executive Council with a view to obtain requisite direction from it where for the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two employees were on leave and in that view of the matter, services of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the respondent came to be appointed on the terms and conditions approved by the Municipal Council.

12. We have noticed hereinbefore that the respondent understood that his appointment would be short-lived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he

affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so.

*13. In the decision of this Court in **S.M. Nilajkar v. Telecom Distt. Manager, (2003) 4 SCC 27** , whereupon the learned counsel for the respondent placed strong reliance, this Court was concerned with a different fact situation obtaining therein. In that case, a scheme for absorption of the employees who were appointed for digging, laying cables, erecting poles, drawing lines and other connected works was made which came into force with effect from 1-10-1989, and only those whose names were not included for regularisation under the said scheme, raised disputes before the Assistant Labour Commissioner, Mangalore. The termination of the services of casual mazdoors by the management of Telecom District Manager, Belgaum, thus came to be questioned in the reference made by the appropriate Government in exercise of its power conferred upon it under Section [10](#) of the Industrial Disputes Act. This Court, having regard to the contentions raised by the respondents that the appellant therein was engaged in a particular type of work, namely, digging, laying cables, erecting poles, drawing lines and other connected works in the project and expansion of the Telecom Office in the district of Belgaum was of the opinion: (SCC p. 37, para 13)*

"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme

or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment."

14. The decision of this Court is not an authority for the proposition that apart from a project or a scheme of temporary duration, Section [2\(oo\)\(bb\)](#) of the Industrial Disputes Act will have no application. Furthermore, in the instant case, as has been noticed by this Court in S.M. Nilajkar itself, the respondent was categorically informed that as per the terms of the contract, the same was a short-lived one and would be liable to termination as and when the appellant thought it fit or proper or necessary to do so. Yet again, this Court in view of the facts and circumstances prevailing therein had no occasion to consider the second part of Section [2\(oo\)\(bb\)](#) of the said Act.

15. There is neither any doubt nor any dispute that the terms and conditions contained in the offer of appointment on both the spells were the same. So far as the employment of a person in a Municipal Council which is "State" in the meaning of Article 12 is concerned, the same must be done in terms of the provisions of the statute and/or rules framed thereunder. The respondent therefore was not appointed on a permanent or a temporary basis. It is not the case of the respondent that while making an offer of appointment, the Municipal Council had complied with the requirements laid down in the statute or statutory rules or even otherwise the same was in conformity with Articles [14](#) and [16](#) of the Constitution.

16. For the reasons aforementioned we are of the opinion that the instant case is covered by the second part of Section

2(oo)(bb) of the said Act.

19. In the instant case, the learned Labour Court, Patiala while deciding the reference, held as under:-

“ - x - x -

9. The representation of the workman argued that after the termination of the workman, the management appointed two drivers vide the statement of WW1 but no chance was given to the workman as required under Section 25-H of the Industrial the Act, 1947. In my view, this provision of the Industrial Disputes Act, 1947 is not attracted in the present case as the workman was not retrenched on 22.7.88 but was relieved on the expiry of the specific period. In these circumstances, there is nothing to uphold that the workman is entitled to any relief. This issue accordingly is decided in favour of the respondents and against the workman.

- x - x - ”

20. When the case in hand is considered in the light of the legal position indicated above, it is manifested that the petitioner was appointed as a driver on *ad hoc* basis for 89 days and there is a specific condition in his appointment letter dated 25.02.1988 (Annexure P-1) that his services are liable to be terminated at any time without giving any notice or assigning any reason. Further, the services of the petitioner were extended vide an order dated 10.06.1988, up to 30.06.1988, on the same terms and conditions and the said fact has not been disputed by the petitioner. Subsequently, the services of the petitioner were terminated vide order dated 08.08.1988 by saying that his services were no more required. Thus, the petitioner was engaged for a specified period and his services have been dispensed with under a stipulation contained in his appointment letter dated 25.02.1988

Court in the cases of *Escorts Limited (supra)*, *Harmohinder Singh (supra)* and *Municipal Council, Samrala (supra)*; in my considered view, the instant case is covered by the provisions of Section 2(oo)(bb) of the 1947 Act, therefore, termination of services of the petitioner does not amount to “retrenchment” in terms of section 2(oo)(bb) of the 1947 Act, therefore, the provisions of Sections 25-F, 25-G and 25-H *ibid* would have no application to the case in hand.

21. In view of the above discussion, I do not find any merit in the present writ petition and the same is accordingly dismissed.

22. All pending applications, if any, shall also stand closed.

2nd November, 2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No