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

CWP-3084-2022

Date of Decision: 17.10.2023

State of Punjab and others

..... Petitioners

Versus

Pargat Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vipin Pal Yadav, Addl. A.G., Punjab
for the petitioners/State.

HARSH BUNGER J. (ORAL)

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari seeking quashing of impugned award dated 09.08.2021 (Annexure P-1) passed by learned Industrial Tribunal, Patiala (for short 'the Tribunal'), whereby the reference of industrial dispute raised by respondent No.1 (Pargat Singh), regarding termination of his services, has been decided in his favour by holding that he is entitled to receive compensation to the tune of Rs.30,000/- along with litigation expenses of Rs.5,000/-.

2. Briefly, respondent No.1 raised an industrial dispute regarding termination of his services. The said dispute was referred to the Tribunal below, for adjudication.

3. In the claim petition filed by respondent No.1, he stated that he joined as Chowkidar at Civil Dispensary, Village Gajju Majra, District Patiala on 11.07.2011 on temporary basis. Respondent No.1 claimed that his services were illegally terminated on 04.08.2017 without issuing any notice, charge-sheet, conducting any enquiry or paying any compensation to him. It was claimed by respondent No.1 that he worked continuously from 11.07.2011 to 03.08.2017 and at the time of termination of his services, he was drawing salary of Rs.6,345/- per month. Respondent No.1 categorically claimed that he had completed 240 working days in the last calendar year. Respondent No.1 further claimed that juniors to him had been retained in service and even new appointments were made after termination of his services; therefore, his services were terminated in violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Accordingly, respondent No.1 prayed for reinstatement in service along with other consequential benefits.

4. On the other hand, the aforesaid claim of respondent No.1 was contested by the petitioner-Management by filing its written statement, wherein it was admitted that respondent No.1 had joined as Chowkidar on temporary basis on the salary of Rs.2,500/- per month. It was stated that respondent No.1 was discharged from service on 03.08.2017 as per the instructions of the Department of Health and Family Welfare vide letter dated 26.07.2017 due to lack of funds and being temporary service. The stand of respondent No.1 that he had worked w.e.f. 11.07.2011 up to 03.08.2017 was admitted by the petitioner-Management, however, the allegation levelled by respondent No.1 to the effect that juniors to him were retained in service and new appointments had also been made by the Management, were denied. Further, the contention of respondent No.1 that

he had completed 240 working days in the last calendar year was also denied by the petitioner-Management and it was stated that services of respondent No.1 were purely temporary in nature as a make shift arrangement by the Staff Nurse. Accordingly, the petitioner-Management prayed for dismissal of the claim of respondent No.1.

5. From pleadings of the parties, the Tribunal below framed the following issues:-

- “1. Whether the termination of the workman from his service was illegal, unconstitutional and unjustified? OPW
2. Whether the workman is entitled to continuity of services with full back wages? OPW
3. Whether the present reference is not maintainable? OPR
4. Relief.”

6. Thereafter, both the parties led evidence in support of their respective case. Respondent No.1 (Pargat Singh) examined himself as WW-1 and led the following evidence:-

Sr. No.	Exhibit(s)	Document(s)
1.	W1/A	Affidavit
2.	W2	Demand Notice
3.	W3	Statement of Claim
4.	W4	Copy of letter of approval for engaging Chowkidar.
5.	W5	Copy of letter dated 03.08.2017 issued from S.M.O., P.H.C. Kauli to Medical Officer, Mini P.H.C. Gajju Majra regarding discontinuing with the services of Pargat Singh, for the time being.
6.	W6	Copy of Attendance Register.

On the other hand, petitioner-Management examined Dr. Ranjana Sharma, Senior Medical Officer, Primary Health Centre, Village Kauli, District Patiala as MW-1, who led the following evidence:-

Sr. No.	Exhibit(s)	Document(s)
1.	MW1/A	Affidavit
2.	R1	Same as Ex. W-4
3.	R2	Copy of letter dated 26.07.2017 from Director Finance N.H.M., Punjab to all the Civil Surgeons regarding continuance of services of Chowkidar.
4.	R3	Same as Ex. W-4

Further, the petitioner-Management examined Dr. Rao Varinder Singh, Medical Officer, Primary Health Centre, Village Gajju Majra, District Patiala as MW-2, who led the following evidence:-

Sr. No.	Exhibit(s)	Document(s)
1.	M2	Affidavit
2.	M3	Same as Ex. W-5

7. Upon considering the material/evidence available on record, Tribunal below decided the reference in favour of respondent No.1 (Pargat Singh) vide award dated 09.08.2021 (Annexure P-1) by holding him entitled for compensation to the tune of Rs.30,000/- along with litigation expenses of Rs.5,000/-.

8. Being aggrieved against the aforesaid award, petitioner-Management has filed the instant writ petition before this Court.

9. I have heard learned counsel for the petitioner-State and perused the paper book with his able assistance.

10. In the instant case, findings returned by the learned Tribunal below can be summed up as under:-

- a) The workman had completed 240 days in the year preceding the date of his termination.
- b) The services of respondent No.1 were terminated without any charge-sheet, enquiry or payment of compensation, therefore, services

of the workman were terminated in violation of Section 25-F of the 1947 Act.

c) The appointment of workman was not made in pursuance of any prescribed recruitment procedure and his services were also never regularized.

d) The approval for engaging Chowkidar was given as per Ex. W-4 and Medical Officer/Staff Nurse was given the authority to engage the said Chowkidar at the rate of Rs.2,500/- per month and expenses were borne from the Salary Component of National Rural Health Mission.

e) Senior Medical Officer, P.H.C. Kauli vide letter dated 03.08.2017 (Ex. W-5) gave instructions to the Medical Officer, Mini P.H.C., Gajju Majra to discontinue services of respondent No.1 (Pargat Singh) due to non-availability of budget for payment of salary under the National Health Mission.

11. After recording the aforesaid findings, learned Tribunal below granted the following relief to respondent No.1:-

*“Non-adherence to the provisions of the Section 25-F of Industrial Disputes Act, 1947, although may lead to the grant of the relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, however, the same would not mean that such relief is to be granted automatically or as a matter of course, as had been held by the Hon’ble Supreme Court in **Haryana State Electronics Development Corporation Ltd. Vs. Mamni 2006(2) LLJ (SC) Page 744** wherein Hon’ble Supreme Court had modified impugned award by directing that the workman shall be compensated by payment of Rs.25000/- instead of order of reinstatement with back wages.*

The above leads only to conclude that the workman is entitled

to compensation only instead of order of reinstatement with continuity of service with back wages. Accordingly, issue No.2 is answered in favour of the workman and against the respondents.

7. As the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this Tribunal by the Appropriate Government for adjudication, the reference is maintainable. In the light of the above discussion, issue No.3 is answered against the respondents.

RELIEF

8. In the light of findings noted above, this reference is hereby answered by holding that workman is entitled to receive compensation to the tune of Rs. 30,000/- (Rupees thirty thousand only), further, as the workman has been pursuing the litigation since filing of demand notice dt. 30-08-2018, he is awarded Rs.5000/- (Rupees five thousand only) as litigation expenses. Respondents are directed to pay the total awarded amount within 45 days of the publication of the award, failing which the workman shall be entitled to the awarded amount along with interest @ 6% per annum till realization.”

A perusal of the above referred findings would manifest that respondent No.1 had rendered continuous service in terms of Section 25-B of the 1947 Act, i.e. 240 days work under the petitioner-Management in the twelve calendar months preceding the date of his termination, however, while terminating services of respondent No.1, the provisions of Section 25-F of the 1947 Act were not adhered to.

12. Learned counsel for the petitioner-State has been unable to dislodge the aforesaid findings returned by the Tribunal. Therefore, no fault can be found with the findings returned by the Tribunal below that termination of services of respondent No.1, without complying with the provisions of Section 25-F of the 1947 Act, is bad. As regards the relief

granted to respondent No.1 is concerned, the Tribunal below has considered the law on issue; and after considering the fact that no prescribed recruitment procedure was adopted by the petitioner-Management, while engaging services of respondent No.1 and that his employment was temporary/*ad hoc* in nature, it has been rightly concluded that instead of granting the relief of reinstatement and other consequential benefits, respondent No.1 would be entitled to compensation of Rs.30,000/- along with litigation expenses of Rs.5,000/-

13. I have gone through the impugned award passed by the Tribunal below and in my considered view, the same has been passed upon appreciating the material/evidence available on record and in accordance with law.

14. Keeping in view the aforesaid facts and circumstances, there is no scope for any interference in the impugned award dated 09.08.2021 (Annexure P-1) rendered by the Tribunal below. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

15. All pending application(s), if any, shall also stand closed.

17.10.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No