

305-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17327-1996 (O&M)

Date of Decision: 13.12.2023

RUPINDER KAUR

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Vikas Singh, Advocate for the petitioner.

Mr. D.K. Singal, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. This Writ Petition is of the year 1996, therefore, the same has been taken up today for final arguments.

2. The petitioner has preferred this Writ Petition as the respondent-State has forced her to again come before this Court in litigation by their action of terminating her services afresh after an award was passed by the Labour Court in her favour setting aside her termination order dated 04.09.1989 with directions to reinstate her in service with full backwages from the date of demand notice i.e. 20.03.1991 till the reinstatement.

3. It was noticed in the award that the petitioner was appointed as a Typist in the office of the respondents on 13.10.1987 and her services had been dispensed with by following the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as "the ID Act"). The Labour Court, Jalandhar has passed the award on 06.09.1993 reinstating the petitioner with continuity in service with full backwages. The said award dated 06.09.1993 was challenged by the respondents before this Court in CWP-2552-1994 which

was dismissed by the Division Bench on 03.08.1994. However, the reinstatement after the dismissal of the Writ Petition was done as a Daily Wage Labourer. After having reinstated her as a Daily Wage Labourer on 07.11.1994, the respondents passed an order dated 31.01.1995 terminating her services afresh as a Daily Wage Labourer on the ground that there was no work of labour and therefore, her services were not required.

4. The petitioner thereafter preferred Contempt Petition bearing No.COCP-318-1995 before this Court and the Assistant Geologist was held guilty of the violation of order of this Court on 25.01.1996 holding that the petitioner was entitled to be reinstated as a Typist and also was entitled to the salary of Typist. A cost of ₹2,500/- was also imposed and the petitioner was given an opportunity to challenge the order of termination before the competent Court. The petitioner was thereafter paid the salary as a Typist vide draft dated 26.07.1996, however, the petitioner was not reinstated. Therefore, she challenged the action of the respondents by filing the present Writ Petition.

5. Learned counsel for the petitioner submits that as the petitioner was to be reinstated as a Typist, the reinstatement as a Labourer and consequent retrenchment as a Labourer is bad in law. He further submits that the respondents had challenged the award passed by the Labour Court and in the Writ Petition filed by the respondents, they had argued that the petitioner was working as a Labourer and not as a Typist, but this Court did not accept the contentions and dismissed the Writ Petition filed by the respondents. Thereafter, she was wrongfully reinstated as a Labourer. The Court sitting in the contempt proceedings also observed that she was holding the post of

Typist and directed the respondents to pay the salary of the Typist. The said order was also not challenged by the respondents and the petitioner was paid salary as a Typist, but impugned order dated 31.01.1995 treated her as a Daily Wage Labourer and later on her services were also dispensed with on the ground that there was no work in the office which could be performed by the Daily Wage Labourer and her services were, therefore, retrenched.

6. The order of termination is also bad as it again fails to adhere to the provisions of Section 25-F of the ID Act as the termination does not grant the requisite one month's salary along with the compensation for the number of years of service rendered.

7. Learned State counsel has, however, submitted that the petitioner was at no point of time appointed as a Typist. He has taken this Court to the documents annexed along with their reply to submit that the payment was made to the petitioner as a Daily Wage Labourer. However, this Court finds that the document which had been an acquittance roll is of the month of August, 1989 while her services were dispensed with on 04.09.1989.

8. The second document which has been placed on record is a letter sent by the concerned Assistant Geologist to another Assistant Geologist with regard to the certificate issued by him in favour of the petitioner mentioned that she was working as a Typist. It is stated that the documents sent to him for verification have not been issued to him as the same is a photostat copy of the photostat copy of the original certificate dated 19.04.1989 and he can only give the affidavit after examining the original certificate.

9. Thus, this Court finds that both the documents cannot be relied upon to reach to a conclusion that the petitioner was not working as a Typist.

10. On the other hand, this Court finds that in the contempt proceedings i.e. in COCP-318-1995, the Hon'ble single Judge observed as under:-

“It is nobody's case before this court that the order is without jurisdiction and in its entirety is incapable of being executed. What the respondent really wants in this petition by raising the above controversy is that this court should go into the question as to whether the petitioner was appointed as a typist on daily wages or a labourer on daily wages. I am afraid that this controversy cannot be gone into in this petition. If the respondents in this petition had any grievance against the award published by the Labour Court and as upheld by the High Court, they could have approached the High Court or the Labour Court with such remedy as may be permissible to them in law. No such effort was made by the respondents and for the first time this controversy is being raised in the contempt petition. In the award of the Labour Court it has been noticed that the petitioner was appointed as a Typist by the respondents on 13.10.1987. The dispute to this effect was also noticed by the labour Court. The workman was examined before the Labour Court where she reaffirmed her claim of being appointed as a typist. The documents which are sought to be placed before this court in the contempt petition were never placed before the Labour Court. The labour Court after recording evidence concluded the issues and directed the reinstatement of the workman with full back wages. As already noticed this award was upheld by a Division Bench of this Court in its decision dated 3.8.1994. Even in that petition the respondents did not care to raise this issue and get the ambiguity removed, if there was any.

Thus, the dispute between the parties was determined and judicially pronounced by the Courts of competent jurisdiction. Vide the decision of Division Bench of this Court dated 3.8.1994

the petitioner was held to be entitled to reinstatement with full back wages which has not been implemented by the respondents inspite of repeated requests. The respondents vide their order dated 7.11.1994 reinstated the petitioner as a daily wage labourer. In fact the respondents have not been fair in implementing the award. They have already gone to the extent of terminating the services of the petitioner vide letter dated 31.1.1995 i.e. immediately after the expiry of a period of two months from the date on which she is stated to have reinstated dated 31.1.1995, but it is clear that the respondents have failed to carry out the orders passed by the Labour Court and as affirmed by the High Court. This Court cannot comment as to what would be the effect of the documents sought to be produced before this court for the first time on the award in favour of the petitioner. The respondents must and are hereby directed to comply with the award by reinstating the petitioner as a typist and pay full back wages as per the award in any case till 31. 1. 1995, which would obviously be subject to such orders as may be passed by the court of competent jurisdiction with regard to the alleged order of termination dated 31.1.1995.”

11. The said order passed by the Court in the contempt petition was not challenged by the respondents and it has been stated in the reply that the petitioner was paid salary of Daily Wage Typist upto 31.1.1995 in terms of the directions of the Court. Once the respondents have accepted to pay salary to the petitioner as a Daily Wage Typist, the order dispensing with her services as a Daily Wage Labour cannot be sustained since she cannot be treated to be working as a Daily Wage Labour. The one month's salary in lieu of one month's notice on account of the Daily Wage Labour was also insufficient apart from that compensation as has also been not paid and thus, the order dated 31.01.1995 is in violation of Section 25-F of the ID Act

which provides for payment of one month's salary in lieu of notice plus compensation to the tune of 15 days' salary of each year of work done by the concerned workman. Since, there was a continuity of service awarded earlier, the order of retrenchment even if the same is considered as so, is defective and cannot be said to be in accordance with the provisions of the 25-F of the ID Act and therefore, in terms of the judgment passed by the Division Bench earlier while dismissing the Writ Petition of the respondents dated 03.08.1994 also cannot be sustained and is accordingly quashed and set aside.

12. This Court also notices that the plea which the respondents have taken now with regard to the petitioner never being appointed as Typist was already taken up by them in the previous proceedings and this Court did not accept their contention. The same contention has been again raked up by the respondents which cannot be allowed to be taken up, when all the contentions which were taken up earlier would be deemed to have been addressed and decided by the Division Bench while dismissing the Writ Petition of the respondents.

13. It is a case where this Court is satisfied that the petitioner has been unnecessary harassed and wrongfully removed from her post only because she claimed herself to be appointed as a Typist. It is not the case of the respondents that they do not have work available for the Typist. The action of the respondents is found to be, therefore, illegal arbitrary and unjustified. The orders are, therefore, quashed and set aside with the directions to treat the petitioner continuous in service on the post of Typist.

14. As this Court also takes a judicial notice of the fact that a person who has been working on a post of Typist for continuous years since her

initial appointment in 1987 would be entitled for regularization on completion of 10 years of service in terms of the Policy dated 25.02.2011 issued by the Government of Punjab for regularization and accordingly, the respondents are directed to treat the petitioner regularized on the post of Typist on completion of 10 years of service. She would be entitled for regular pay scale from the date her appointment on regular basis with increments. The arrears shall also be calculated and paid to the petitioner.

15. The Compliance of this order shall be made within a period of three months.

16. All the pending applications shall stand **disposed of** accordingly.

December 13, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>