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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 11.09.2023

1. CM-1719-CWP-2019 in/and
CWP-17768-2001 (O/M)
Municipal Council, Panipat Petitioner

Versus

Ram Rati and another Respondents

2. CWP-4578-2001 (O/M)
Municipal Council, Panipat Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and
another Respondents

3. CWP-17865-2001 (O/M)
Municipal Council, Panipat Petitioner

Versus

Birbhan and another Respondents

4. CWP-17866-2001 (O/M)
Municipal Council, Panipat Petitioner

Versus

Mahender and another Respondents

5. CWP-17903-2001 (O/M)
Municipal Council, Panipat Petitioner

Versus

Dharam Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Manoj Sood, Advocate
for non applicant-petitioner in CM-1719-CWP-2019 in
CWP-17768-2001 and
for the petitioners in other cases.

Mr. Shivam Malik, Advocate
for applicant-respondent No. 1 in CM-1719-CWP-2019 in
CWP-17768-2001 and
for respondents-workmen in other cases.

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HARSH BUNGER, J.

CM-1719-CWP-2019 in CWP-17768-2001

This is an application filed under Section 151 of Civil Procedure Code for fixing the case on an actual date for hearing, keeping in view the peculiar facts and circumstances of the case.

Learned counsel for non applicant-petitioner submits that he has no objection if the instant application is allowed and the main writ petition alongwith other connected cases are listed for arguments.

In view of aforesaid submission, the instant application is allowed and the main writ petition (CWP-17768-2001) alongwith other connected cases, which are already on the Regular Board of this Court at Serial No. 830, are taken on Board today itself for hearing.

Application is accordingly disposed of.

Main cases

1. This order shall dispose of abovementioned batch of five writ petitions bearing No. CWP-17768-2001, CWP-4578-2001, CWP-17865-2001, CWP-17866-2001 and CWP-17903-2001 as they all arise out of common Award dated 20.10.2000 (Annexure P-4), passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal').

For brevity, facts have been taken from CWP-17768-2001.

The petitioners (Municipal Council, Panipat), in the abovesaid five writ petitions, have filed these writ petitions under Articles 226/227 of the Constitution of India seeking quashing of the Award dated 20.10.2000 (Annexure P-4), passed by the Tribunal, whereby respondents-workmen have been ordered to be reinstated with continuity of service and 50% back wages from the date of demand notice in their respective cases.

2. Learned counsel for the petitioner (Municipal Council, Panipat) submits that these five writ petitions were decided by a common Award dated 20.10.2000 (Annexure P-4) whereby a total number of 25 references were decided. Learned counsel for the petitioner further submits that fourteen other writ petitions filed by Municipal Council, Panipat against the same very Award dated 20.10.2000 (Annexure P-4) were decided and disposed of by a Hon'ble Division Bench of this Court, vide judgment dated 10.09.2007 wherein the lead case was CWP-8365-2001, titled as *Municipal Council, Panipat Versus Jagbir and another*. Learned counsel for

the petitioner has handed over a copy of the aforesaid judgment, passed in *Municipal Council, Panipat Versus Jagbir and another (supra)* in Court today, which is taken on record and marked as 'A', subject to all just exceptions .

Vide the aforesaid judgment dated 10.09.2007, the following observation was made :-

“ *On the basis of the judgments noticed above, it can therefore be concluded that in the case of public employment where workman takes back door entry in service by way of illegal appointment, which is not in consonance with Articles 14 and 16 of the Constitution of India, and the appointment is temporary, on daily wages, muster rolls basis or on adhoc basis, such a workman would have no right to reinstatement. A person who takes entry in the service on the basis of such appointment, knows that no permanence is attached and his services are liable to be terminated at any point of time. Only because an employee has been working for more than 240 days, that by itself would not confer any legal right upon him to be regularised in service. If an appointment has been made contrary to the provisions of the statute, the same would be void and the effect thereof would be that no legal right would be derived by the employee by reason thereof. If the circumstances as noticed hereinabove exist, it has to be held that provisions of Section 25-F of the Act will not be attracted.*

The facts and circumstances of the case

clearly show that the respondent was given appointment in an illegal manner, not in consonance with Articles 14 and 16 of the Constitution of India, not against a sanctioned post and not in accordance with statutory provisions or rules framed thereunder. Considering the law as laid down by the Hon'ble Supreme Court in the judgments considered hereinabove, reinstatement of the respondent could not have been ordered by the Labour Court.

Accordingly, this petition is allowed and the impugned award is set aside.

We, however, direct the petitioner to pay the back wages as are required and permissible under Section 17-B of the Act within 30 days from today.”

3. While referring to the aforesaid judgment dated 10.09.2007, learned counsel for the petitioner submits that the instant batch of five writ petitions would also be covered by the aforesaid judgment dated 10.09.2007, rendered by a Hon'ble Division Bench of this Court in CWP-8365-2001 and prays that these five writ petitions be also disposed of in terms of the said judgement dated 10.09.2007.

4. On the other hand, learned counsel appearing for respondents-workmen does not dispute the fact that these writ petitions also emanate from the common Award dated 20.10.2000 (Annexure P-4) whereby a total number of 25 references were decided by the Tribunal. However, learned counsel for respondents-workmen tried to carve out an exception to the said judgment dated 10.09.2007 by submitting that subsequent to the passing of

Award by the Tribunal, respondents-workmen were reinstated and accordingly, these cases of respondents-workmen would not be covered by the said judgment.

However, I am not convinced with the aforesaid submission made by learned counsel for respondents-workmen in these five cases.

5. Concededly, the instant batch of five writ petitions also lay challenge to the same Award dated 20.10.2000 (Annexure P-4), passed by the Tribunal, which has already been set aside by a Hon'ble Division Bench of this Court in *Municipal Council, Panipat Versus Jagbir and another* (supra), and, therefore, the instant batch of five writ petitions would also be covered by the aforesaid judgment, rendered by a Hon'ble Division Bench of this Court in CWP-8365-2001.

As regards the submission of learned counsel for respondents-workmen that subsequent to passing of the Award by the Tribunal, respondents-workmen were reinstated in service, it is observed that since respondents-workmen were held to be appointed in an illegal manner; not in consonance with Articles 14 and 16 of the Constitution of India; not against a sanctioned post and not in accordance with statutory provisions or rules framed thereunder and the reinstatement of respondents-workmen in the batch of above referred 14 cases, decided vide judgment dated 10.09.2007, passed in CWP-8365-2001, having been held to be bad and the Award dated 20.10.2000, passed by the Tribunal, having been set aside, the case of respondents-workmen cannot be considered independently and dehors the aforesaid Award dated 20.10.2000, passed by the Tribunal.

6. Apart from the above, a perusal of the paper book further reveals that on 02.05.2002, the following order was passed in the instant four writ petitions (except CWP-4578-2001), which read as under :-

“ Learned Advocate General, Haryana, upon instructions states that subject to the decision of this petition, the workman be employed on daily wages. The other dues payable under Section 17-B of the Industrial Disputes Act, 1947, would also be paid to the workman.

List on 5.8.2002 for further directions.”

Thereafter, on 27.04.2017, the following order was passed in all the writ petitions :-

“ Learned counsel for the petitioner states that in pursuance of the award dated 20.10.2000 passed by Industrial Tribunal-cum-Labour Court, Panipat the respondent-workman has already been reinstated. However, he seeks time to take further instructions from the concerned Department for the purpose of settlement.

Let notice be issued to respondent-workman for 24.05.2017.”

A perusal of the aforesaid orders would clearly indicate that perhaps, respondents-workmen were reinstated, subject to the decision of these writ petitions.

7. Thus, the argument raised by learned counsel for respondents-workmen in these cases that they were reinstated in service after passing of the Award dated 20.10.2000 (Annexure P-4) and their case would not be

covered by the decision in CWP-8365-2001, is without any merit and is rejected.

8. In view of the above discussion, the instant batch of five writ petitions also stand disposed of, in terms of judgment dated 10.09.2007, rendered by a Hon'ble Division Bench of this Court in CWP-8365-2001 titled as *Municipal Council, Panipat Versus Jagbir and another* and other connected matters.

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

(HARSH BUNGER)
JUDGE

11.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No