

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

**(1)**

**CWP-1148-2014 (O&M)**

GOVERNMENT POLYTECHNIC SONIPAT

...Petitioner

Versus

NIRMAL SINGH AND ANOTHER

...Respondents

**(2)**

**CWP-28067-2013 (O&M)**

**Date of Decision: 23.11.2023**

NIRMAL SINGH

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, PANIPAT AND ANOTHER

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Praveen Chander Goyal, Addl. A.G., Haryana  
for the petitioner (in ***CWP-1148-2014***) and  
for the respondents (in ***CWP-28067-2013***).

Mr. Ramesh Goyat, Advocate  
for the petitioner (in ***CWP-28067-2013***) and  
for respondent No.1 (in ***CWP-1148-2014***).

**HARSH BUNGER, J.**

This order shall dispose of two petitions bearing ***CWP-1148-2014*** titled as ***Government Polytechnic Sonipat Versus Nirmal Singh and another*** and ***CWP-28067-2013*** titled as ***Nirmal Singh Versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another*** as both of them have emanated from a common Award dated 06.09.2013 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat.

2. Prayer in ***CWP-1148-2014*** titled as ***Government Polytechnic Sonipat Versus Nirmal Singh and another*** is for quashing of Award dated 06.09.2013 (Annexure P-1) passed by the learned Presiding Officer,

Industrial Tribunal-cum-Labour Court, Panipat; whereby the reference regarding termination of services of respondent No.1-workman was decided in his favour to the effect that he is entitled to reinstatement with continuity of service and 50% back wages from the date of Demand Notice i.e. 27.10.2008.

Prayer in **CWP-28067-2013** titled as ***Nirmal Singh Versus The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another*** is for quashing of Award dated 06.09.2013 (Annexure P-5) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat; whereby the reference regarding termination of services of the petitioner was decided in his favour to the effect that he is entitled to reinstatement with continuity of service and 50% back wages from the date of Demand Notice i.e. 27.10.2008.

However, for the sake of convenience, the facts are being extracted from **CWP-1148-2014** titled as ***Government Polytechnic Sonipat Versus Nirmal Singh and another***.

3. Briefly, workman-Nirmal Singh raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Panipat (here-in-after referred to as 'the Tribunal') under Section 10(1)(c) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act, 1947').

4. It was claimed by the workman that he joined the services as Peon/Helper on 01.08.2000 @ Rs.2250/- p.m. and continued to work as such with sincerity, honestly and diligently. It was the pleaded case of the workman that when he requested the Management to regularize his services in terms of letter dated 20.10.2003 then instead of regularization of his

services, the same were terminated on 02.10.2006, without giving him any notice or pay in lieu thereof and retrenchment compensation. It was further stated by the workman that junior to him have been retrained while terminating his services and the work performed by him was of regular nature; however, his services were terminated arbitrarily and in violation of the provisions of the Act, 1947. Accordingly, he claimed reinstatement with continuity of service and full back wages.

5. The afore-said claim of the workman was contested by the Management on the ground that the workman worked under Community Development Scheme as Helper on contract basis and that the appointment of the workman was purely on contractual basis for a certain specified period and specified work and that the scheme under which the workman was engaged as Helper, was purely on temporary plan scheme in the nature of a project of Ministry of Human Resources Development (Department of Higher Education) Government of India, New Delhi. It was stated that the aforesaid Scheme had already expired w.e.f. 31.03.2007. It was the categorical case of the Management that the last contract with the workman expired on 02.10.2006. It was also the case of the Management that the workman was also offered to work as Clerk-cum-Typist on contract basis; however, he did not report for duty. The Management also took a stand that there was no provision of regularization of the services of the workman because the scheme in which, he was engaged as helper on contract basis, was purely a temporary plan scheme and the tenure of the workman ended as the contract expired on 02.10.2006.

No replication was filed to the afore-said stand of the Management.

6. On the basis of the pleadings of the parties, the issues were framed and the parties led their respective evidence.

7. The learned Tribunal, vide impugned Award dated 06.09.2013 (Annexure P-1) decided the reference in favour of the workman by holding that he is entitled to be reinstated with continuity of service and 50% back wages from the date of demand notice i.e. 27.10.2008.

8. Being dis-satisfied with the aforesaid Award, the Management has filed **CWP-1148-2014**. Similarly, the worker has also challenged the aforesaid Award dated 06.09.2013 (Annexure P-1) by way of filing **CWP-28067-2013** to the extent whereby, 50% back wages have been denied to him.

9. Learned counsel for the Management argued that the learned Tribunal below has failed to take into consideration that that workman was engaged on contract, which was extended from time to time and there was a specified scheme for a specified period and even the contracts were executed. Learned counsel for the Management submits that even the scheme under which the workman was engaged, stood expired on 31.03.2007 and prior to that, the services of the workman had been dispensed with on the expiry of contract on 02.10.2006. Accordingly, it is contended on behalf of the Management that the case in hand would fall under the provisions of Section 2(o)(bb) of the Act, 1947 and the workman is not entitled to claim reinstatement and other consequential benefits. Accordingly, prayer has been made for setting aside of impugned Award dated 06.09.2013 (Annexure P-1) and rejecting the claim of the workman.

10. On the other hand, learned counsel appearing for the workman has supported the findings returned by the learned Tribunal below by

submitting that the Tribunal has rightly appreciated the evidence/material placed on the record and the learned Tribunal has passed the well-reasoned, legal and justified award, holding the workman entitled to reinstatement with 50% back wages. It is contended that the workman has filed the writ petition i.e. **CWP-28067-2013** only to the extent where the benefit of 50% back wages have been denied to him. Learned counsel for the workman has contended that once the Tribunal has granted the relief of reinstatement; accordingly, the full back wages should also have been granted. However, no reason has been tendered by the learned Tribunal below for restricting the back wages only to the extent of 50%. Accordingly, learned counsel for the workman submits that the writ petition filed by the Management be dismissed and the writ petition filed by the workman be accepted and appropriate directions be issued for granting full back wages to the workman.

11. I have heard learned counsel for the parties and have perused the paper-book with their able assistance.

12. A perusal of the paper book would reveal that concededly, the workman was engaged for the post of Helper w.e.f. 01.08.2000 upto 28.02.2001 and the claim statement would also indicate that there is a clear reference of engagement of services of the petitioner on contract basis. In this regard, a contract/agreement has been placed on record as Annexure P-2, which clearly indicates the terms of engagement of the workman. The relevant extract thereof reads as under :-

*“1. The First Party/Principal/Project Officer has engaged Nirmal Singh the second party for the post of Helper from 01.08.2000 to 28.02.2001 and all the terms and*

*conditions have been well explained to the second party on dated 31.07.2000.*

2. *The Helper will be paid Rs.1500/- per month for the above said job and both the parties are agreed for the same.*

3. *This appointment is based on temporary in the Financial year and fall under Community Development Centre and it can be terminated at any stage. In these circumstances, the agreement will automatically be cancelled and there is no liability of Regional Government to this effect.*

4 & 5. xxx xxx xxx

6. *The appointment made therein will be completely on temporary basis as per terms and conditions of contract.*

7 to 10. xxx xxx xxx

11. *After completion of contractual period and due to non compliance of Section 6, in case of need of first party to the helper of Second party then he is free to engage any other person on contract basis.*

13. There is another agreement/contract (Annexure P-3) executed between the workman and the Management, which also indicates the terms of engagement of the workman. The relevant thereof read as under :-

*“First Party/Principal has engaged the second Party Nirmal Singh for the post of Helper Harbal Park at Community Development Centre under Community Development Scheme, Ministry of Human Resource Development on temporary basis. The terms and conditions of these agreements have been well explained.*

1. *Both the parties are agreed to pay Rs.2000/- p.m. to Sh. Nirmal Singh for the above post of Helper.*

2. *This appointment is based on temporary in the financial year and fall under Community Development Centre and it can be terminated at any stage. In these*

*circumstances, the agreement will automatically be cancelled and there is no liability of Regional Government to this effect.*

3.                   xxx                   xxx                   xxx

4.     *The appointment made therein will be completely on temporary basis as per terms and conditions of contract.*

5 & 6.           xxx                   xxx                   xxx

7.     *After completion of contractual period and due to non compliance of Section 6, in case of need of first party to the helper of Second party then he is free to engage any other person on contract basis.”*

The existence of contracts between the parties is not disputed by workman-Nirmal Singh. Rather in the claim statement (Annexure P-2 in **CWP No.28067-2013**) filed by workman-Nirmal Singh in para No.4 thereof, the workman (Nirmal singh) has made the following averments :-

*“4. That the applicant has signed the contracts of CDC again and again under compulsion of false assurance of Principal of respondent-institution. However, the Principal of respondent-institution had taken work of ‘Peon’ from the applicant. When the applicant-workman has forced his demand of regularization of his service, his services have been terminated on 02.10.2006. Now they intent to appoint any other person on his place and to regularize his services. This act of respondent is amount to unfair labour practice.”*

14.           In terms of letter dated 30.07.2007 (Annexure P-6), the existing scheme of Community Polytechnics expired on 31.03.2007 and vide another letter dated 04.10.2007 issued by the Government of India, Ministry of Human Resource Development, directions were issued that the Community Polytechnics are afforded three months’ additional time till 31.10.2007 to

wind up the ongoing programmes, settle financial liabilities and secure the Scheme's Assets in safe custody.

15. A perusal of the above extracted terms and conditions would clearly indicate that the workman was engaged purely on contractual basis under a specified scheme i.e. Community Development Programme of Government of India.

16. Here, it would be apposite to extract the provisions of Section 2(oo)(bb) of the Act, 1947, which are as under :-

*“2(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; or]*

The afore-said provisions have been interpreted by the Hon'ble Supreme Court in the case of ***Escorts Limited v. Presiding Officer, 1997(11) SCC 521***, wherein it has been held 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... ”*

**In *Harmohinder Singh v. Kharga Canteen, Ambala Cantt.,***

**2001(3) SCT 758**, 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...”*

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:-

*“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.*

17. When the facts of this case are considered in the light of the legal position as indicated above, it is manifest that the workman was very

well aware that his services were engaged purely on contractual basis under a specified scheme for a specified period and even the contacts were duly executed. Therefore, in my considered view, the case of the workman would squarely fall under the provisions of Section 2(oo)(bb) of the Act, 1947. Consequently, the termination of services of the workman does not amount to retrenchment, accordingly, the provisions of Sections 25-F, 25-G and 25-H would not be applicable as the same are attracted only in case, a workman has been retrenched.

18. In view of the above, the findings returned by the learned Tribunal below are perverse being contrary to the material/evidence available on the record and is unsustainable. Resultantly, the impugned Award dated 06.09.2013 passed by the Tribunal is set aside and resultantly, the writ petition i.e. CWP-1148-2014 filed by the Management shall stand allowed and CWP-28067-2013 filed by workman-Nirmal Singh shall stand dismissed.

19. No other point has been urged.

20. All pending application/s, if any, shall stand closed.

21. A photocopy of this order be placed on the file of another connected case.

**November 23, 2023**

gurpreet

**(HARSH BUNGER)**

**JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No