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

CWP-25518-2013

Date of Decision: 11.12.2023

The Secretary, Battles of Panipat, War Memorial Society Geeta
Kendra, Kurukshetra

....Petitioner

Versus

Rajbir Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Manvinder Singh Sidhu, Advocate
for the petitioner.

Ms. Abha Rathore, Advocate
for respondent No.1.

HARSH BUNGER, J.

1. Petitioner has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing of impugned award dated 22.02.2013 (Annexure P-6) passed by the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter 'the Tribunal'), whereby the reference of Industrial Dispute regarding termination of services of respondent No.1-workman (Rajbir Singh) has been answered in favour of the workman and he has been held entitled to reinstatement with continuity of service and 25% back wages from the date of demand notice i.e. 04.04.2005.

2. Briefly, it is the pleaded case of respondent no. 1 (Rajbir Singh) that he was appointed as security guard at Binjhol Rest House and he worked from 01.08.2001 to 13.10.2003, however his services were terminated on 14.10.2003, which was claimed to be in violation of

provisions of section 25-F and 25-H of 1947 Act.

3. On the other hand, petitioners-Management took a stand that initially respondent no. 1 was engaged on 01.08.2001 for 89-89 days and then for one year vide letter dated 08.10.2002 on contract basis. It was stated that after the expiry of period of one year for which respondent No.1 was engaged, there was no requirement of any security guard and the respondent No.1 left the job as per the terms and conditions of the appointment letter. Therefore, it was stated that the respondent No.1 has no cause of action and there was no industrial dispute. Accordingly, prayer for dismissal of the claim of the workman was made.

4. Upon considering the material/evidence available on record, the learned Industrial Tribunal-cum-Labour Court, Panipat, decided the reference, by holding as under: -

"14. As pointed out by Ld. AR for the workman MWI during his cross-examination has admitted that the workman had worked with the respondents for 311 days and no notice or pay in lieu of notice and retrenchment compensation were given to the workman before terminating his services. So, the respondents has violated the provisions of Section 25F of the Act without offering retrenchment compensation as provided under section 25-F will make termination as illegal and in support relied upon judgment of Hon' ble Supreme Court in the case "Anoop Sharma Vs. Executive Engineer, Public Health, Division No.1, Panipat reported in 2010 (3) SCT 318 holding that "provisions of Section 25-F are mandatory and non-compliance thereof render the retrenchment of an employee as nullity." Similar views were taken by Hon'ble High Court in 2010 (1) Law Herald (SC) 592 in the case of Ramesh Kumar Vs. State

*of Haryana, in which it is held that "workman worked for 3 years and termination of his services in violation of compliance of provisions of Section 25-F so workman was held entitled to claim relief." He further relied upon a judgment in **Haryana Agricultural University Versus Presiding officer, Industrial Tribunal-cum-Labour Court and another 2011 LLR 1218** wherein it has been held that "termination of service of an employee who has completed 240 days" continuous service, without payment of retrenchment compensation simultaneously at the time of termination by complying with the provisions of Section 25F, may attract reinstatement that too with full back wages, continuity of service and consequential benefits." I find force in the arguments of workman.*

15. *In the light of fore-going discussion, it is held that the workman has been able to lead cogent and sufficient evidence on the file to prove that he had completed the continuous service of 240 days with the respondent during the preceding 12 calendar months from the date of termination of his services and that the termination of his services by the respondents is illegal and invalid. Resultantly, this issue is decided against the respondents.*

ISSUES NO.2 to 7.

16. *All these issues were not discussed, pressed or argued by learned Authorized Representatives for any of the parties during the course of arguments and, accordingly, the same are decided against the respondents /management.*

17. *In view of my findings on the above discussed issues, as discussed in the preceding paragraphs, this reference is decided in favour of the workman to the effect that he is entitled to reinstatement with continuity of service and 25% back wages from the date of Demand Notice, i.e. 4.4.05 and an Award is passed accordingly."*

5. A perusal of the above extracted findings would reveal that the tribunal below has primarily dealt with the case of respondent No.1 only from the perspective of the workman in terms of Section 25-F of the 1947 Act. It is apparent that the Tribunal below has not at all dealt with the submission made on behalf of the petitioner-management that the engagement of respondent no. 1 – workman (Rajbir Singh) was contractual for a specified period. Therefore, the tribunal below has not appreciated the pleaded case of the parties in its right perspective.

6. Be that as it may, it would be appropriate to refer to the terms and conditions contained in the office order no. 1454-59 dated 08.10.2002 (Annexure P-2), whereby the respondent no. 1 was appointed for a period of one year, which read as follows:

“(i) Your appointment can be terminated at any time without any notice.

(ii) The appointment is valid only for one year which can be extended as per necessity of the society.

(iii) No other benefits except consolidated wages of Rs.3000/- per month will be provided by the society.

If the above terms and conditions are applicable to you, then you should report for duty in the office of Assistant Curator, Panipat Museum, Canal Rest House (Binjhole), Panipat within 5 (five) days of the receipt of this letter; failing which the offer is liable to be cancelled.

*Sd-
Secretary
Battles of Panipat War Memorial Society,
Panchkula.*

Endst. Even No.1454-1459

Dt: 8.10.2002”

It is clear from the above extracted terms and conditions of engagement that the respondent no. 1 was aware that his appointment was

for a specified period i.e. one year. He is also aware that he is not eligible to any other benefits except consolidated wages of Rs. 3,000/- per month and he could be terminated at any time without any notice. The respondent no. 1 was also aware that his appointment would stand automatically terminated on the completion of the stipulated period.

7. It is evident from the paperbook that after the expiry of the stipulated period of one year as contained in the office order no. 1454-59 dated 08.10.2002 (Annexure P-2), the services of respondent no. 1 were discontinued and therefore it is not a retrenchment under section 2(oo)(bb) of 1947 Act.

8. 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.

9. Considering the totality of circumstances, I am of the considered view that case of respondent no. 1 – workman (Rajbir Singh) is covered by the provisions of Section 2(oo)(bb) of the said 1947 Act and keeping in view the observations of Hon'ble Supreme Court in the case of ***Municipal Council, Samrala (supra)***, since the termination of services of the petitioner does not amount to “retrenchment” in terms of section 2(oo)(bb) of 1947 Act, therefore, the provisions of section 25F, 25G and 25H would have no application to the case in hand.

10. In view of the above discussion, the impugned award is unsustainable in the eyes of law and the same is accordingly set aside. Resultantly, the instant petition is allowed.

11. All pending applications (if any) shall stand closed.

11.12.2023
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No