

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

CWP-2513-2017 (O&M)
Date of decision :22.11.2023

THE DIRECTOR, WOMEN AND CHILD DEVELOPMENT
DEPARTMENT, BAYS 15-20 HARYANA, SECTOR-4,
PANCHKULA, NEAR PETROL PUMP.

...Petitioner

Versus

HANUMAN AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Parveen Chander Goyal, Addl. A.G., Haryana
for the petitioner-State.

Mr. Rishav Sharma, Advocate
for respondent No.1.

HARSH BUNGER, J. (ORAL)

1. Petitioner (The Director, Women and Child Development Department, Haryana) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned Award dated 11.07.2016 (Annexure P-1) passed by the learned Labour Court, Ambala; whereby, the reference of industrial dispute raised by respondent No.1-Hanuman has been answered in his favour and he has been held entitled to reinstatement with continuity of service and 50% back wages, to be calculated on the basis of last drawn salary.

2. Briefly, respondent No.2 herein (Hanuman) raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Labour Court below and the same came to be decided vide Award dated 11.07.2016 (Annexure P-1) by holding as under :-

“9. Undisputedly, the workman Hanuman was initially appointed as a peon along with four peons namely Anita Rani, Manoj, Sunil and Sonu against regular sanctioned posts w.e.f. 6.1.2012 under the Haryana Government Outsourcing Policy dated 16.2.2009 (Part-II) by the respondent vide letter dated 6.1.2012, copy of which is placed on record as Ex.W6 for a period of six months and he worked upto 5.7.2012. Thereafter, fresh sanction was accorded for engaging four peons against the vacant posts on DC rates as per the aforesaid policy of the Haryana Government for another period of six months or till the regular candidates are selected, which ever is earlier by the respondent vide letter dated 18.7.2012 Ex.W7 and in pursuance thereof the workman worked from 18.7.2012 to 17.1.2013. A perusal of the letter dated 18.2.2013 Ex.M7 would, however, reveal that the quotations were called from the Services Provider for providing services for cleaning of premises, horticulture work, housekeeping services, maintenance of building etc. in the Department and the quotations made by the Service Provider Jai Santoshi Maa Security and Placement Service, Panchkula was found lowest and accordingly, the Service Provider was requested by the respondent to provide service of four persons for the said purposes. In Para no.9 of the preliminary objections of the written statement, it has been specifically pleaded by the respondent that the name of the workman Hanuman was given alongwith three other persons by the aforesaid Service Provider to work as multipurpose worker and accordingly the workman was engaged as a multipurpose worker for a period of six months on contract basis in terms of the Haryana Government Outsourcing Policy (Part-I) and as per the said Policy the monthly wages of such outsourced employees were required to be paid by

the service provider. Here it is not disputed that the workman accordingly worked with the department from 18.2.2013 to 18.7.2013 as a multipurpose worker. It is, however, pertinent to note that the respondent vide Endst. No.15736-750/EA-B/WCD/2013 dated 19.7.2013 (copy of which is placed on file as Ex.WX=Ex.W8) accorded fresh sanction to grant extension for engaging persons purely on contractual basis for a period of six months or till the regularly selected candidates are appointed. In pursuance of the said sanction order, as many as 45 persons including the workman Hanuman (as mentioned in the list attached with the sanction order) were engaged against Class-IV vacant posts and thereafter the workman continuously worked with the department upto 19.8.2014 i.e. for a period of more than 240 days when he was abruptly relieved from the service in pursuance of the letter dated 11.8.2014. At this stage, it may be noticed that the respondent has not produced any material evidence on record to show that the workman was engaged through any Service Provider or wages were paid to him by the Service Provider when he was freshly engaged on 19.7.2013 in terms of the sanction order dated 19.7.2013. It also could not be proved on record that the Service Provider, if any through whom the department alleges to have engaged the workman, was meeting all the required criteria under the Contract Labour (Regulation and Abolition) Act, 1970 to be eligible to employ employees on contractual basis which includes license number etc. Rather it is established on record that the workman was engaged against a regular vacant post by the respondent and he continuously worked for the period from 19.7.2013 to 19.8.2013 i.e. for more than a year and therefore he could be subjected to retrenchment only through procedure mentioned in the Act. Undisputedly, the procedure laid down under section

25-F of the Act has not been complied in the case and therefore the action of the respondent is a clear case of retrenchment of the workman for which the workman deserves to be reinstated with continuity of service with 50% back wages to be calculated on the basis of the last drawn salary. Accordingly, issue no.1 is decided in favour of the workman in the manner stated above.

ISSUES NO.2 to 7

10. Neither any evidence was led on these issues nor these issues were pressed during the course of arguments by the learned Government Pleader appearing on behalf of the respondent. Hence, these issues are decided against the respondent.

ISSUES NO.8 (Relief)

11. In view of my findings on issue no.1, the reference is answered in favour of the workman holding that workman is entitled to be reinstated with continuity of service and 50% back wages to be calculated on the basis of the last drawn salary. Copies of award be sent to the authorities concerned.”

3. Aggrieved against the afore-said Award, the petitioner-department has filed the instant writ petition before this Court.

4. During the pendency of the instant writ petition, respondent No.1 filed an application bearing **CM-3815-CWP-2021**, seeking disposal of the writ petition on the plea that respondent No.1, herein was appointed as a Peon along with four other persons namely, Anita Rani, Manoj, Sunil, Sonu and the services of all the afore-said persons including the petitioner, were terminated; whereupon, the said persons had raised industrial dispute by filing their respective claim petitions before the learned Labour Court below and the same resulting into the passing of Award as in the case of the petitioner; wherein, the workmen were held entitled to reinstatement with

continuity of service and 50% back wages. Respondent no.1 claimed that the said Awards were challenged by the petitioner-department by way of filing separate writ petitions i.e. **CWP-6772-2017** as regards the workman Manoj Kumar is concerned and **CWP-6754-2017** as regards the workman Sonu is concerned. So far as the workmen-Manoj Kumar and Sonu are concerned, the writ petitions filed by the petitioner-department against them already stand dismissed by this Court.

5. During the course of hearing today, learned counsel for respondent No.1 has handed over a copy of order dated **08.05.2018** passed in **CWP-6772-2017** in the case of workman-Manoj Kumar, which reads as under :-

“Learned State counsel submits that respondent No.1 has been taken back on duty. Rest of the direction given in the Award shall be complied with at the earliest.

In view of the above, no cause of action survives in this petition. Dismissed.”

6. Similarly, learned counsel for respondent No.1 has also handed over a copy of order dated **17.07.2023** passed in **CWP-6754-2017** in the case of workman-Sonu Kumar, which reads as under :-

“1. Present petition under Article 226/227 of the Constitution of India has been filed seeking issuance of a writ in the nature of certiorari for quashing impugned award dated 11.07.2016 (Annexure P-1) passed by the Presiding Officer, Labour Court, Ambala.

2. The Presiding Officer, Labour Court, Ambala granted the following relief to respondent No.1 (workman) vide award dated 11.07.2016 (Annexure P-1) :-

“In view of my findings on Issue No.1, the reference is answered in favour of the workman holding that workman is entitled

to be reinstated with continuity of service and 50% back wages to be calculated on the basis of the last drawn salary. Copies of award be sent to the authorities concerned.”

3. *Learned counsel for the petitioner submits that respondent No.1-workman was reinstated in service on 24.10.2017, in terms of order dated 30.03.2017 passed by this Court, which is also recorded in order dated 02.02.2018. He has also handed over a copy of letter dated 18.11.2022 issued by the Director, Women and Child Welfare Department, Haryana, Panchkula, regarding payment of 50% back wages to Sonu Kumar (respondent No.1), which is taken on record, subject to all just exceptions. Learned counsel for the petitioner further submits that in view of the aforesaid fact, he may be permitted to withdraw the instant writ petition.*

4. *Learned counsel representing respondent No.1 submits that respondent No.1 (workman) has been paid 50% of the back wages.*

5. *In view of the statement made by learned counsel representing petitioner, this writ petition is dismissed as withdrawn.*

6. *All pending application(s), if any, shall also stand closed.”*

7. Learned State counsel appearing for the petitioner-department has not disputed the factum of the passing of afore-said orders passed in the case of other workmen-Sonu Kumar and Manoj Kumar.

8. Rather a perusal of order dated 17.07.2023 passed in **CWP-6754-2017** would indicate that the department has already reinstated the workman-Sonu Kumar in service on 24.10.2017 and subsequently, even the 50% back wages have been paid to said Sonu Kumar. Accordingly, the petitioner-department had withdrawn the said writ petition.

9. Considering the afore-stated facts and circumstances, I am of the considered view that since the petitioner was appointed along with four other persons as Peon and the services of afore-said persons have been terminated by the petitioner-department; whereupon, the said workman had raised an industrial dispute which culminated into the passing of separate awards holding the workmen entitled to reinstatement with other consequential benefits and the challenge to the said awards by the petitioner-department having been dismissed and/or withdrawn by the petitioner-department, in my considered view, the case of respondent No.1 herein cannot be treated differently when the afore-said similarly circumstanced persons, qua whom, the petitioner-department had already implemented the award by reinstating them and also granting them 50% back wages.

10. In view of the afore-mentioned facts and circumstances, the instant writ petition is dismissed.

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

November 22, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No