

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

LPA-1055-2022(O&M)
Reserved on 09.05.2023
Date of Decision: 11.05.2023

The Panipat Co-operative Sugar Mills Ltd.

. . . . Appellant

Vs.

The Presiding Officer, Industrial Tribunal/Labour Court, Panipat &Anr.

. . . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

Present: Mr. Rajinder Goel, Advocate for the appellants.

Mr. R.K. Malik, Senior Advocate assisted by
Mr. Varun Veer Chauhan, Advocate,
for the caveator-respondent.

M.S. RAMACHANDRA RAO, J.

1. This Letters Patent Appeal is filed challenging judgment dt.10.08.2022 passed by the learned Single Judge of this Court in *CWP-831-1996*.
2. The said Writ Petition had been filed by the appellant (herein) challenging Annexure P-7 Award passed by the Presiding Officer, Labour Court, Panipat on a reference made by the State of Haryana under section 10 of the Industrial Disputes Act, 1947.
3. In the said reference, the Labour Court had to determine whether the termination of services of respondent No.2 (herein) were justified and in accordance with law.

4. Respondent No.2 had been appointed as a Bottling Attendant in the Distillery Unit of the appellant in 1988, and he continued to work upto 13.01.1990, on which day, his services were terminated without assigning any reason.
5. Respondent No.2 contended that no notice was given to him; that no retrenchment compensation was paid to him as required under section 25-F of the Industrial Disputes Act, 1947; and there was no charge-sheet or any domestic enquiry held against him; and so, the termination of his services was illegal, unjust and he was entitled to reinstatement with back wages.
6. Respondent No.2 had earlier approached this High Court by filing Writ Petition No. *CWP-875-1990* along with others challenging his termination, but the same was dismissed on 04.05.1990 (P-4) by a Division Bench of this Court without assigning any reasons by simply stating one word “dismissed”.

The award of the Labour Court

7. Before the Labour Court, respondent No.2 examined himself as WW-1 and marked Exhibits A-1 and A-2, and the appellant examined MW-1 and marked Exhibits M-1 to M-5.
8. The appellant contended before the Labour Court that the reference was not maintainable in view of the decision in the said Writ Petition.
9. This plea was rejected stating that it was *in liminidismissed* and such an order would not operate as *res judicata*.
10. The case of the appellant was that respondent No.2 had been engaged as a daily-rated worker; that on 05.10.1988, he along with others were engaged against the permanent post of unskilled bottling attendants; that he was

put on probation for a period of one year which was later extended for one more year on 12.10.1989; and so his services were terminated on 13.01.1990 as it was found to be not satisfactory.

11. The Labour Court held that in the Standing Orders governing the service conditions of the employees of the appellant, the maximum period of probation could only be one year, and there was no power to extend it from one year to two years, as was done by the appellant.

It held that a period of probation can at best be only extended by six months from the initial period of six months, and any stipulation in the letter of appointment or any other order extending the period of probation beyond this one year period would not be valid, and the Managing Director of the appellant had no authority to do so.

It held that the services of respondent No.2 stood confirmed after a period of six months, if they were not terminated before that period.

The Labour Court also rejected the plea of the appellant that certified Standing Orders which are applicable to an employee of Co-operative Sugar Mills, Panipat are not applicable to the employees of distillery which was a separate unit on the ground that such an argument would be contrary to the pleading of the appellant in the written statement filed by it where there was an admission that the certified Standing Orders govern the service conditions of the workman.

Reliance was also placed on the provisions of the Model Standing Orders framed by the State of Haryana and also on Section 12-A of the Industrial Employment (Standing Orders) Act, 1946, and it was held that

the order of the appellant extending the period of probation of respondent No.2 beyond one year is not valid.

12. The Labour Court concluded that respondent No.2 was deemed to have completed his period of probation after the expiry of six months from the date of his appointment on 05.10.1988 as Bottling Attendant and his services were terminated on 13.01.1990; and since the provisions of section 25-F of the Industrial Disputes Act, 1947 were not followed before terminating his services, such termination is illegal and unjust, and he was entitled to his reinstatement.
13. It referred to his statement on oath that he was unemployed since 13.01.1990, and taking into account the fact that this statement of respondent No.2 is unrebutted, it held that he was entitled to full back wages.

Writ Petition CWP-831-1996

14. Challenging the award of the Labour Court in reference No.81 of 1994 dt.26.10.1994, which had been notified on 08.05.1995, the appellant filed Writ Petition No. *CWP-831-1996* before this Court.
15. By order dt.10.08.2022, the said Writ Petition was dismissed by the learned Single Judge.
16. The learned Single Judge held that there was no dispute that respondent No.2 had completed 240 days of service in 12 calendar months preceding the date of termination of his services; that the termination of his services would be covered by the definition of the term 'retrenchment' as provided under section 2(oo) of the Industrial Disputes Act, 1947; and to avoid complying with the pre-conditions for valid retrenchment as required under the said Act, the appellant had put up the plea that the probation of

- respondent No.2 had been extended by the competent authority and the termination was on account of the fact that the services of respondent No.2 were not found satisfactory.
17. The learned Single Judge held that the appellant had pleaded that the services of respondent No.2 were covered by the Certified Standing Orders under which the maximum period of probation, with any extension, could only be for one year; that as per the said standing orders, on completion of one year, the services of the workman would stand regularized; and therefore the Labour Court had not committed any illegality in not recognizing the extension of probation of respondent No.2 beyond the period of one year.
 18. He held that any action of extension of probation of respondent No.2 beyond the maximum period of one year was *non-est* and void *ab initio*, and that the Labour Court had rightly treated the extension of probation beyond the period of one year as *non-est*.
 19. Consequently, he held that the termination of the services of respondent No.2 would amount to 'retrenchment' as defined in section 2(oo) of the Industrial Disputes Act, 1947, and since the pre-conditions for retrenchment are not complied with, the Labour Court had rightly directed his reinstatement.
 20. He therefore upheld the award of the Labour Court and held that respondent No.2 was entitled to all benefits granted by the Labour Court.
 21. Having noted that respondent No.2 already stands retired, the learned Single Judge held that it would be appropriate if the appellant is directed to grant all consequential benefits to respondent No.2 on account of

reinstatement, such as continuity of service and back wages, and to release the same within sixty days from the date of his order.

The LPA

22. Challenging the same, this Letters Patent Appeal is filed.
23. Counsel for the appellant contended that the reference is bad in law having regard to the order passed on 04.05.1990 (P-4) by Division Bench of this Court dismissing the Writ Petition *CWP-875-1990* filed by respondent No.2 along with others.
24. We are unable to accept the said contention because the said Writ Petition was dismissed with one word '*dismissed*'. There are no reasons assigned why it was being dismissed.
25. In our opinion, the Labour Court had rightly rejected such a plea because though the issues raised in the reference were also issues raised in the said Writ Petition, there was no finding on any issue because the Writ Petition came to be dismissed with one word '*dismissed*'. Sec11 CPC cannot therefore be applied.
26. As rightly held by the learned Single Judge, the appellant itself had admitted in the written statement filed by it that it is bound by the certified Standing Orders governing the service conditions of the employees of the Panipat Co-operative Sugar Mills Ltd., Panipat which permitted probation period to be initially of six months, which could be extended only by a further period of six months. The said Standing Order further provided that after the expiry of the probationary period, the probationer would be deemed to have been confirmed.

27. Thus, the maximum period an employee could have been put on probation was only one year, and on the expiry of the said period, he would automatically become confirmed.
28. Admittedly, in the instant case, on 05.10.1988 the appellant was adjusted against the permanent post of unskilled Bottling Attendant, and on 12.10.1989 his probation was extended for one more year.
29. By 04.04.1989, the six month period of probation having been expired, respondent No.2 has to be taken as confirmed because there was no extension of period of probation before that date. Even if such an extension had been granted, it could not have gone beyond 04.10.1989.
30. Therefore since the appellant had put in more than 240 days of service in a period of 12 calendar months, his services could not have been terminated in violation of section 25-F of the Industrial Disputes Act, 1947.
31. We therefore find no merit in the present Appeal.
32. Accordingly, this LPA stands dismissed with cost of Rs.20,000/- to be paid by the appellant to respondent No.2 within six weeks.
33. Pending application(s), if any, also stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

11.05.2023

Mohit Goyal

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No