

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

**LPA-26-2020 (O&M) along with connected
appeals bearing LPA-29, 38, 112, 120 &
133-2020 (O&M)
Decided on : 22.02.2023**

Gulshan Kumar

.....Appellant(s)

Versus

Managing Director, UHBVNL Panchkula & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Manoj Makkar, Advocate, for the appellant(s).

None for the respondents.

G.S. Sandhawalia, J. :-

The present set of 6 appeals arise out of common order dated 18.07.2018 passed by the learned Single Judge whereby 9 writ petitions, filed by the Management were disposed of by modifying the award dated 25.02.2015 (Annexure P-1) wherein 50% back-wages had been granted from the date of filing of the claim statement.

2. The reasoning given by the learned Single Judge was that the service of the workman as Assistant Linesman was from 15.10.2009 till 30.10.2011 while dealing with the case of CWP-7402-2016. The termination of the services was without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act') without any notice or payment and juniors were still retained and therefore, provisions of Section 25-G & 25-H of the Act were violated. The argument raised that it was

termination on the expiry of the contract period was repelled on the ground that no material was placed before the Tribunal to record such a finding as there was no illegality in the award and therefore, the same cannot be upset on that account as it was not an appellate proceedings. Resultantly, while placing reliance upon the judgment of the Apex Court in **Defence Research Education Society & another Vs. Neeta Tuteja, 2015 (1) SCT 18**, the learned Single Judge directed that reinstatement should be done without back-wages but with continuity of service and thus, the award was modified accordingly.

3. A perusal of the paperbook would go on to show that the claim of the workman before the Labour Court in the case of Gulshan Kumar-appellant was that he has worked as ALM from 08.05.2010 till 30.09.2011 and on 01.10.2011, his services had been terminated and therefore, the provisions of Section 25-F, 25-G & 25-H of the Act were invoked. The stock defence taken by the employer was that they were engaged on the basis of service agreement under outsourcing policy on DC rates and it was for a fixed period which had automatically expired when the regular selected candidate was employed. The relationship of employer and employee was also denied and that he had not completed 240 days. The officer from the office of the SDO (Operations) of the Uttar Haryana Bijli Vitran Nigam had appeared and produced the above rules and similarly the Executive Engineer had appeared as Management witness and placed on record the service agreement between the workman and Management as Ex.M-1 which showed that the working period was as claimed.

4. Accordingly, by noticing that the period of service was not to exceed 6 months and there was no clause for renewal however since they had continued in service and they were not governed by the service agreement any

more, a finding was accordingly recorded that the workman worked for 362 days in 12 months preceding the date of his termination with break of 3 days. Therefore, it would be continuous period under Section 25-B-(2) of the Act and dispensing of service was without any notice or payment of retrenchment compensation and there was violation of the provisions of Section 25-F of the Act and reinstatement was thus ordered on 26.02.2015 with 50% back wages. It is not disputed that the appellants are still continuing in service of the respondents.

5. In such circumstances, keeping in view the nature of their appointment, we are of the considered opinion that the learned Single Judge was well justified while coming to the conclusion that back-wages are not liable to be granted as it was only an appointment under outsourcing contract policy on DC rate basis for the exigencies of the proper maintenance of the utility service. The learned Single Judge has duly protected the interest of the workmen to the extent that they will be given the notional increment as they were entitled for and it was with continuity of service. The appointment with the respondents was not a regular appointment on the basis of any advertisement and therefore, during the period they remained out of service would have worked elsewhere and in such circumstances, it would not be appropriate to burden the public utility service with the 50% back-wages for the work not taken from the workmen.

6. Resultantly, we do not find any ground to interfere in the well reasoned order of the learned Single Judge. Even otherwise, it is to be noticed that the appeals are barred by 431 days and sufficient cause which is alleged to have been pleaded is that power of attorney and other documents had been handed over to another counsel of this Court but the appeals had not been filed after the learned Single Judge had passed the order on 18.07.2018. It is only

on 12.10.2019, the appellants had met the present undersigned counsel and on checking came to know that no appeal had been filed and resultantly, the appeals had been filed and delay of 431 days had occurred. The name of the counsel who was earlier engaged has not been mentioned and resultantly, we are of the opinion that only a concocted story has been made up and no sufficient cause is also made out.

7. For the above-said reasons, we do not wish to interfere in the judgment passed by the learned Single Judge dated 18.07.2018 and do not condone the delay in the absence of any sufficient cause having been made out. Resultantly, the present appeals are dismissed and all misc.applications also are hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

22.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No