

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

(232)

LPA-1870-2019 (O&M)

Decided on: 10.01.2023

Chief Medical Officer (Civil Surgeon), Maharaj Agrasen, Civil Hospital,
Hisar

....Appellant

Versus

Naresh Kumar and another

.... Respondents

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

Present: Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

None for the respondents.

G.S. Sandhawalia, J.

The State is in appeal against the order passed by the learned Single Judge in **CWP No.5439 of 2019** wherein its writ petition against the Award dated 01.06.2018 (Annexure P-5) was dismissed on 28.02.2019. Challenge has also been made to the order dated 02.09.2019, whereby the review application alongwith application for condonation of delay of 63 days was dismissed.

2. The Labour Court had found that the workman had worked from the year 2012 to 2015 when he was asked to leave the job and, therefore, the fact that for 240 days service was there, if calculated backward from the year 2015 when cause of action arose. Resultantly, the Tribunal had found that there was violation of Section 25-F of the Industrial Disputes Act, 1947 (for short '1947 Act') as the procedural requirements were not satisfied at the time of termination. Secondly,

person junior to the workman had been retained and, therefore, provisions of Section 25-G of the 1947 Act had been violated and the principle of 'last come first go' had not been adhered to. The argument that the engagement was through outsourcing policy through a labour contractor was rejected on the ground that the service contract was not placed on record before the Tribunal. The Tribunal had, however, pegged the quantum of backwages to 50%. It was noticed that need for Sewerman had not come to an end as the system was being continued through Contractor and there was sufficient proof to show that the payment was being made to the Contractor by way of receipts for the months of April and May 2015 (Ex.M4). Therefore, there was enough material to show that there was a relationship between the department and the workman.

3. Resultantly, while applying the parameters of interference in awards of Tribunal as laid down by the Apex Court in the judgment '**Syed Yakoob Vs. K.S. Radhakrishnan**', AIR 1964 SC 477, the writ petition was dismissed by the learned Single Judge on the ground that there was plausible reason to interfere.

4. Counsel for the State has tried to convince this Court by referring to the documents which had been part of the review application before the learned Single Judge to show that there was service agreement as such with Security Agency while referring to the Engagement Letter dated 30.03.2015 (Annexure A-3) and service agreement dated 26.02.2015.

5. The said argument is only to be noticed and rejected, as the dispute is qua the appointment which is claimed and made from October, 2009. The claim as such of the workman was that he was appointed as a

Sewerman-cum-Sanitary Helper with the respondents in November, 2009 as a Daily Wager and worked upto 31.03.2015. He used to be paid wages @ ₹8,300/- per month and his services had been terminated on 18.02.2015 w.e.f. 31.03.2015, in spite of the fact that he had completed 240 days. He had given reference of others who were employed after his removal and, thus, claimed the benefit of provision of Section 25-G & H of the 1947 Act and by also mentioning the name of Abhimanyu who had also been removed vide same letter and had been taken back in compliance of Court order.

6. The Department had admitted the fact that he had worked from 25.10.2010 to 24.11.2010 for two hours at the rate of ₹4,214/- per month and, thereafter till 05.08.2011 at the same rate and with a contract from 26.08.2011 to 20.08.2012 at the rate of ₹5,380/- per month. It was admitted that he had worked upto 31.03.2015 as per the permission of the Mission Director, NRHM and payment had been made to him as per the DC Rates. The engagement thereafter was through outsourcing agency from 01.04.2015 to 31.05.2015 when he is stated to have left the service. Apparently, the matter was thereafter referred on 15.06.2016 by the Labour Department to the Court.

7. The Labour Court had referred to the statement of MW1, Deputy Superintendent, wherein there was an admission that appointment had been made on 25.10.2010 and the duty hours were from 9:00 AM to 4:00 PM and the fact that the workman was removed from service w.e.f. 31.03.2015 and that he had not been given any compensation. Abhimanyu who had also been removed from service had been taken back as per the order of the Labour Court and was still doing his duties. The fact that he

had requested vide application dated 24.03.2015 (Ex.M2) to be re-employed on contract basis was also referred to and the fact that he had worked through outsourcing agency at a second point of time from April to June, 2015. It was in such circumstances, the finding had been recorded by the Labour Court that he had worked for 240 days preceding his termination and there is violation of statutory provisions which has also been noticed by the learned Single Judge.

8. A perusal of Annexure P-6 which has been appended which is the letter dated 18.02.2015 would go on to show that the dispensing with the services was on account of the policy which was to be implemented with the General Hospital, Hisar and services of both the workmen were terminated w.e.f. 31.03.2015. It is, thus, apparent that on completion of 240 days as such preceding the date of date of termination, the right to receive retrenchment compensation had occurred which had not been paid and on that account reinstatement had been ordered. The relief granted by the Labour Court is also to the extent that only 50% backwages had been granted from June, 2015 with all other consequential benefits, but a caveat had been put that in case of regular substantive appointments made, the workman would make way for regularly appointed employees. However, he had been given liberty to apply for the post subject to his qualification and eligibility. Thus, it cannot be said that the Labour Court granted any additional benefit to the workman, which was not due as per the statutory provisions.

9. In such circumstances, we are of the considered opinion that the reference as such made in the review application before learned Single Judge that appointment was through a contractor in the year 2015 or in the

appeal is without any basis, as the cause of action arose on account of his termination on 31.03.2015. There is no denial to the fact that he had worked from 2010 onwards till his termination on 31.03.2015.

10. Resultantly, the orders of the learned Single Judge dated 28.02.2019 and 02.09.2019 do not suffer from any infirmity or illegality, which would warrant interference in the present Letters Patent Appeal. The same is, accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

10.01.2023
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No