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

CWP-1037-2019 (O/M)

Date of decision : 14.07.2023

Om Parkash

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and
another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Shubham Kashyap, Advocate for
Mr. Sandeep Singal, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (Om Parkash) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned Award dated 09.10.2018 (Annexure P-7), passed by the Industrial Tribunal-cum-Labour Court, Rohtak (in short 'the Labour Court'), which was decided against the petitioner. Further prayer has been made for directing respondent No. 2-Management to reinstate the petitioner on his previous post with continuity of service and full back wages.

2. Briefly, the petitioner claims to have been initially appointed as a Safai Karamchari (Sweeper) on 31.10.1993 and states that his services were illegally terminated on 31.12.2002 verbally and without assigning any reason, whereupon he challenged his termination of services by raising an industrial

dispute, which was decided in his favour by the Labour Court, vide Award dated 04.01.2006 (Annexure P-1) and the relief of reinstatement in service with continuity of service but without back wages was granted to the petitioner. It is stated that respondent No. 2-Management challenged the aforesaid Award dated 04.01.2006 (Annexure P-1) by filing a writ petition (CWP-15978-2006 titled as *Executive Engineer, Uttar Haryana Bijli Vitran Nigam Ltd. Versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rothak and another*) before this Court. The petitioner claims that no notice of hearing of the said writ petition was ever issued to him nor any such notice was received by him from this Court. Accordingly, the petitioner was not able to appear and contest the said writ petition. It is claimed that during the pendency of said writ petition, the petitioner was reinstated in service on 17.04.2007. It is further stated that the aforesaid writ petition (CWP-15978-2006) filed by respondent No. 2-Management, was allowed, vide order dated 18.03.2011 (Annexure P-2) and the Award dated 04.01.2006 (Annexure P-1), passed by the Labour Court, was set aside.

3. The petitioner claims that after the passing of the aforesaid order dated 18.03.2011 (Annexure P-2), respondent No. 2-Management again terminated the services of the petitioner on 03.11.2011 verbally and without issuing any show cause notice. Accordingly, the petitioner again challenged the termination of his services by raising a fresh demand notice dated 21.11.2011 (Annexure P-3) and then filing a claim statement before the Labour Court, which was contested by respondent No. 2-Management and both the parties led their respective evidence. The Labour Court, vide Award

dated 09.10.2018 (Annexure P-7), dismissed the reference by holding that no right of the petitioner has been infringed.

4. In the aforesaid circumstances, the petitioner has filed the instant writ petition before this Court.

5. Learned counsel for the petitioner submits that the petitioner had duly proved on record that he had worked till 31.10.2011 with a notional break of one day after every 89 days. He submits that the petitioner has also proved that two persons junior to him, namely, Ashok Kumar and Suresh Kumar, were retained in service and also that no retrenchment compensation was paid to him (petitioner). Hence, respondent No. 2-Management had violated the provisions of Section 25-F, Section 25-G and Section 25-H of the Act. It is thus contended that the learned Labour Court has wrongly passed the impugned Award against the petitioner.

6. Learned counsel for the petitioner further contends that the earlier Award dated 04.01.2006 (Annexure P-1), passed in favour of the petitioner, was challenged by respondent No. 2-Management by filing CWP-15978-2006, however, no notice of hearing of the said writ petition was ever received by petitioner from this Court, resultantly, the petitioner was not able to appear and contest the said writ petition. Learned counsel for the petitioner submits that the judgment dated 18.03.2011 (Annexure P-2), passed by this Court in CWP-15978-2006, is liable to be ignored while deciding the instant case.

It is further submitted that since the date of his termination, the petitioner has not remained gainfully employed in any other industrial

establishment and is living from hand to mouth by doing labour work solely for the purpose of earning livelihood for his family. Accordingly, it is submitted that the instant writ petition be allowed by quashing the impugned Award dated 09.10.2018 (Annexure P-7), passed by the Industrial Tribunal-cum-Labour Court, Rohtak and further a direction be issued to respondent No. 2-Management to reinstate the petitioner on his previous post with continuity of service and full back wages.

7. I have heard the learned counsel for the petitioner and have also perused the paperbook with the able assistance of learned counsel for the petitioner.

8. The petitioner claims that subsequent to the passing of the Award dated 04.01.2006 (Annexure P-1), he was reinstated in service on 17.04.2007 and respondent No. 2-Management had terminated his services on 03.11.2011 verbally and without issuing any show cause notice. In the industrial dispute raised before the Industrial Tribunal-cum-Labour Court, Rohtak, which was filed directly by the petitioner before the said Tribunal in view of amended Section 2A (2) of the Act, the petitioner while referring to his appointment as a Safai Karamchari on 31.10.1993 and on other averments, claimed that he had completed 55 months of service after rejoining his duty and the termination of his services was violative of the principles of natural justice and the same also amounts to unfair labour practice besides being violative of Section 25-F of the Act. The petitioner claimed that some persons, namely, Bansi Singh, Suresh Kumar, Ashok Kumar and Balraj, who were junior to him, were still working with

respondent No. 2-Management and the services of one person junior to him, namely Tarepan, have been regularized and accordingly, the provisions of Section 25-G and Section 25-H of the Act have also been violated.

9. The aforesaid claim of the petitioner was contested by respondent No. 2-Management by pleading that there is no relationship of employer and employee between the parties as he (petitioner) never worked in their office as a regular employee even for a single day. It was stated that the petitioner had worked as part time Sweeper and not as a workman. In this regard, a reference was made to judgment dated 18.03.2011 (Annexure P-2), passed by this Court in CWP-15978-2006, whereby the earlier Award dated 04.01.2006 (Annexure P-1), passed by learned Labour Court, Rohtak, was set aside and it was held that the petitioner was working on part time basis. In the said writ petition (CWP-15978-2006), it was held as under :-

“ The petitioner/Management has impugned the award of the Labour Court, Rohtak dated 4.1.2006. A reference was claimed under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) :-

“Whether termination of services of Shri Om Parkash is justified and if not, to what relief he is entitled to ?”

The respondent/workman had raised a demand on 29.1.2003 against the petitioner/management alleging that he was appointed on regular basis and had completed more than 240 days of service in one calendar year with the petitioner and his work and conduct was satisfactory, but his services were terminated erroneously on 31.12.2002 verbally without

assigning any reason or reasonable cause and without complying with the provisions of Section 25F of the Industrial Disputes Act. Such type of termination amounted to unfair labour practice. He further alleged that the persons junior to him were still working and, therefore, there has been violation of the provisions of Sections 25G and 25H of the Act.

The petitioner/management set up a plea that the respondent was not a workman within the definition of the Act and that he was working as a Part Time Sweeper on D.C. rates only for four hours on daily basis for a period of 89 days and one day gap was given when he was re-employed. He never completed 240 days in on calendar year, as alleged. They pleaded that the provisions of the Act were neither attracted, nor violated. It was specifically pleaded that no person junior to the respondent was working with the management.

The Tribunal answered the reference in favour of the workman and ordered his reinstatement on his previous post with continuity in service without any back wages.

The question which has been raised herein is as to whether a part time employee like the respondent/workman was entitled to the benefits of the Industrial Disputes Act and whether a part time worker who comes within the definition of Section 2(s) of the Act, can also be treated to be a workman within the meaning of the Act, so as to be held entitled to the benefits of the provisions of the Act in particular the provisions of Chapter IIA and VB thereof. The question which has been raised herein was referred to the Full

Bench in C.W.P. No.4660 of 1999 and in the admission order, the petition was ordered to be listed after the decision of the Full Bench.

The Full Bench of this Court has since rendered the decision on 22.5.2008 and it has been concluded as under :-

“In view of the facts mentioned above, we conclude that a part time worker would fall within the definition of a workman as postulated under Sections 2(s) of the I.D. Act. However, nature of his employment will be that of a contractual employee and employer be at liberty to terminate him and his termination would not entitle him to get any benefit under the provisions of Chapter VA and VB of the I.D. Act. It is further clarified that to enforce rights and obligations arising under contract of employment, may be in writing or oral, the part time worker may invoke the provisions of I.D. Act other than contained in Chapter VA and VB of the Act.”

In view of the aforesaid, when there is no dispute that the respondent/workman was working on part time basis and in view of the observations made by the Full Bench, as extracted above, I am of the opinion that the writ petition deserves to be allowed and the impugned award deserves to be set aside.

Ordered accordingly.”

It was pleaded that the petitioner had worked as a part time Sweeper on daily basis at D.C. Rate for four hours' only and he was not a workman. It was also pleaded that no sanction for the post of part time Sweeper was accorded and as such his services were discontinued. The Labour Court, vide impugned Award dated 09.10.2018 (Annexure P-7), dismissed the claim petition filed by the petitioner by holding as under :-

“10. After giving my thoughtful consideration to the

rival contentions and appreciating the entire evidence adduced in the case, I am of the considered opinion that the petitioner is not entitled to any relief in this case. Initially, services of the petitioner were terminated on 31.12.2002 by the respondent. Upon a reference by the appropriate Government, this Court, vide award dated 04.01.2006, ordered his reinstatement with continuity in service but without any back wages. The respondent, being aggrieved by the said award, challenged the same before the Hon'ble High Court by filing CWP No. 15978 of 2006. In the meantime, in compliance of the award dated 04.01.2006, the petitioner was reinstated on his previous post. The said writ petition was eventually allowed by the Hon'ble High Court vide order dated 18.03.2011 and the award dated 04.01.2006 passed by this Court was set aside. The consequence of the order dated 18.03.2011 passed by the Hon'ble High Court is that termination of services of the petitioner by the respondent on 31.12.2002, was valid. The respondent, after the passing of the orders dated 18.03.2011 by the Hon'ble High Court, terminated the services of the petitioner on 03.11.2011 because, he had been reinstated on the basis of the order dated 04.01.2006 which had been set aside by the Hon'ble High Court. Therefore, the evidence led by the petitioner in this case is not relevant because his termination is because of the fact that the award dated 04.01.2006, on the basis of which he was reinstated, stands set aside by the Hon'ble High Court vide order dated 18.03.2011 passed in CWP No. 15978 of 2006.

11. As a sequel to what has been discussed above, it

is held that termination of the services of the petitioner is not illegal or bad in law. Hence, this issue is decided against the petitioner.

Issue No. 2 (Relief)

12. In view of my findings on issued No. 1, the present claim petition is dismissed and the petitioner is held entitled to no relief.

File be consigned to record room after due compliance.”

10. I have gone through the aforesaid findings returned by the Industrial Tribunal-cum-Labour Court, Rohtak and I do not find any illegality or perversity in the same. Concededly, the petitioner had raised an industrial dispute earlier, which was decided in his favour, vide Award dated 04.01.2006 (Annexure P-1), passed by the Industrial Tribunal-cum-Labour Court, Rohtak, whereby he was ordered to be reinstated in service with continuity of service but without any back wages. It is not disputed that the aforesaid Award dated 04.01.2006 (Annexure P-1) was challenged by respondent No. 2-Management before this Court, vide CWP-15978-2006 and in the meantime, the petitioner herein was reinstated on the basis of the earlier Award dated 04.01.2006 (Annexure P-1). Subsequently, writ petition filed by respondent No. 2-Management was allowed by this Court, vide order dated 18.03.2011 (Annexure P-2) by setting aside the Award dated 04.01.2006 (Annexure P-1) and concluding that the petitioner was working on part time basis. Thus, the termination of services of the petitioner by respondent No. 2-Management was held to be valid. Admittedly, the order dated 18.03.2011 (Annexure P-2), passed in CWP-15978-2006, has not

been challenged by the petitioner till date and the same has attained finality. Once, the petitioner has not laid any challenge to the said order dated 18.03.2011 (Annexure P-2), the subsequent termination of services of the petitioner on 03.11.2011 [as he had been reinstated in service on the basis of Award dated 04.01.2006 (Annexure P-1), which was subsequently set aside by this Court, vide order dated 18.03.2011 (Annexure P-2), passed in CWP-15978-2006] and also the evidence led by the petitioner as regards his termination subsequent to his reinstatement in pursuance to Award dated 04.01.2006 (Annexure P-1), cannot be considered independently.

11. Accordingly, finding no merit in this writ petition, the same is dismissed.

12. Applications, if any, pending also stand disposed of.

(HARSH BUNGER)
JUDGE

14.07.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No