

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

**LPA-9745-2018 (O&M)
Decided on : 13.02.2023**

Rajbir Singh

.....Appellant(s)

Versus

Presiding Officer (Industrial Disputes), Labour Court, Ambala & others

.....Respondent(s)

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

Present:- Ms.Puja Chopra, Advocate, for the appellant.

Mr.Chirag Wadhwa, Advocate, for respondent Nos.2 & 3.

G.S. Sandhawalia, J. :-

1. Consideration in the present Letters Patent Appeal, which arises out of the order dated 20.12.2017 of the Learned Single Judge passed in CWP-6808-2015 titled Rajbir Singh Vs. *Presiding officer & others*, wherein the Labour Court's award dated 15.01.2015 was upheld and the writ petition was dismissed on the ground that in view of the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (for short, the 'Act') since the appointment was contractual the dispensation of service would come within the terms of the appointment as per agreement (Annexure R-3/1). Challenge has also been raised to the order passed in review dated 07.08.2018 since on an earlier occasion, liberty had been

granted when LPA-180-2018 was withdrawn on 09.05.2018 to approach the learned Single Judge.

2. Counsel for the appellant has pointed out that the orders below were not sustainable keeping in view the length of service and the fact that the appellant had been employed as Computer Operator on contractual basis in April, 2001 and had been posted with the Indian Red Cross Society, District Branch, Kurukshetra. The same had been taken over by the District Information & Technology Society (DITS) and he was relieved by the society on 28.02.2011 to join in the same. Thereafter, he continued to work under the HARIS project as a Computer Operator continuously w.e.f. 04.03.2011 as per the agreement dated 04.07.2011. He had worked for 11 years in the project and there was no complaint against him and his work and conduct remained good and satisfactory. He also performed election duties in the year 2004 in the Lok Sabha elections and Haryana Vidhan Sabha elections in 2005 and similarly in the years 2009 and 2010. He was getting salary at the DC rates @ Rs.7500/- per month which was deposited in his account and thus, his termination on 13.12.2011 was in violation of the provisions of Section 25-F of the Act.

3. The allegations leveled against the workman was that he entered 11 documents in the computer and since the Naib Tehsildar and Registration Clerk had gone to Chandigarh to this Court for getting the reply vetted, they had asked the workman to enter the said documents. On a surprise visit by the SDM, Pehowa, the fault was put on him that he was filling in the documents without authority and no opportunity of hearing was given. He had approached this Court by filing CWP-9225-2012 which was disposed of on 16.05.2012 to seek appropriate remedy to challenge the retrenchment.

4. The defence of the State was that the termination order had been passed under Section 2(oo) of the Act as per the agreement and it was also admitted that the other revenue officials had come to Chandigarh for official work in the AG office for preparation of the written statement and on inspection it was found that he was entering 19 documents without the permission of the Naib Tehsildar. It was also admitted that report was submitted wherein Des Raj, the Registration Clerk was also summoned and eventually the Enquiry Officer had recommended disciplinary action against the workman and his services had thus been dispensed with on 13.12.2011 with immediate effect. Resultantly, the stand taken was that he was not punished by way of disciplinary action but terminated on account of the fact that there was an assignment agreement in his letter of appointment.

5. The Labour Court also noticed that the enquiry was conducted by Ms.Sumedha Kataria, the Addl.Deputy Commissioner, Kurukshetra and recorded a finding that the service was dispensed with on the basis of the enquiry report but came to the conclusion that no regular enquiry was conducted and therefore, it could not be said that it was a stigmatic order. The continuous service of 11 years and of 240 days in the preceding year in view of the contract which was renewed from 04.03.2011 to 31.12.2011 was relied upon to hold that there was no need to give directions to the Department to hold regular enquiry and only his salary till 31.12.2011 was liable to be paid while deciding issue No.1. Thus, the only relief granted was to pay the wages upto 31.12.2011.

6. It is clear that the stand of the appellant throughout was that on instructions from Des Raj, the Registration Clerk, he was doing the entries and working whereas the officials were on official tour to the AG

office at Chandigarh. It was on that account, he was found liable for doing the work which had been delegated to him. It has also come on record that the Registration Clerk having gone to Chandigarh, no irregularity qua him was found but the Deputy Commissioner in her communication dated 09.11.2011 to the Commissioner, Kurukshetra had stated that the Naib Tehsildar had not marked documents in Part-3 Nos.1 to 8 which had been entered in the computer in the wrong manner by the Computer Operator. On lifting the veil, thus, an admission has come that the Naib Tehsildar had marked the documents and the appellant being a Data Operator, was only complying with the directions of the Registration Clerk who was on official tour and was made the scapegoat.

7. A perusal of the agreement which has been executed on 04.07.2011 (Annexure R-3/1) would also go on to show that though the termination could be without any notice or compensation and the period of assignment could be shortened if the job was unsatisfactory of the Computer Operator as per Clause 1 and as per Clause 3, adequate opportunity had to be given for explaining the non-performance. The said clauses read as under:

“1. That the Computer Operator has been engaged for the project namely “HARIS”. The period, during which job work will be executed, will be effective from 4th March 2011 and will terminate on 31st December 2011, without any notice or compensation to the Computer Operator. The period of assignment may be shortened earlier due to the cessation of the above job or unsatisfactory performance of the job by Computer Operator. The working on the above assignment shall in no case confer any legal right or claim for regularization of his service in any circumstances what so ever.

2. xxxx xxxx

3. In the event of un-satisfactory work or performance of the Computer Operator, assignment agreement shall be terminable

after giving him appropriate opportunity for explanation about non performance.”

8. It is thus apparent that the enquiry was done at the back of the appellant who had put in 11 years of service. The State was still utilizing his services as contractual employee at the district level under different agencies and inspite of the fact that he had worked with them for a decade and it would amount to unfair labour practice, if his services are dispensed with on the pretext of the agreement between them. Reliance can be placed upon the judgment of the Apex Court in **Naresh Kumar Thakur Vs. Principal/executive Director Civil Aviation Training College, Allahabad, 2016 (15) SCC 701**, wherein it was held that High Court can interfere in the industrial disputes only if there is jurisdictional error committed by the Labour Court and since the Act is a social welfare legislation. Thus, once the workman had completed a period of 240 days preceding his retrenchment which was in violation of the terms of the agreement entered into and on the basis of a stigmatic report without giving him an opportunity of hearing, we are of the considered opinion that by treating 2 employees on a different parameters while exonerating the one who was in regular service, the axe had wrongly been veiled on the contractual employee.

9. This aspect has totally been lost sight by the Labour Court and even by the learned Single Judge. In such circumstances, we are of the considered opinion that the appeal is liable to be allowed in favour of the workman who is liable to be taken back in service on the same terms and conditions as he was appointed in 2011. Counsel for the appellant has fairly conceded that since the appellant has been working elsewhere but certain rights would accrue to him on the account of continuous service of

a decade, she has instructions that the workman would not claim back-

wages. Accordingly, the liability of the State to pay back-wages shall not be there. However, for all other purposes, he would be deemed to be given all notional benefits and his period of service shall be treated as continuous for him to avail any other benefits in terms of regularization etc.

10. The present appeal stands allowed in the above-said terms. The appellant be taken back in service within 4 weeks.

(G.S. SANDHAWALIA)
JUDGE

13.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No