

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

RSA-3335-1998

Reserved on: 14.11.2023

Date of decision: 23.01.2024

ASHOK K. SHARMA AND ANR.**..Appellants****Versus****PUNJAB STATE COOPERATIVE SUPPLY
AND MARKETING FEDERATION LTD. & ANR.****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Amit Sharma, Advocate
for the appellants.

Mr. Vikas Chatrath, Advocate
Mr. Abhishek Singh, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. This regular second appeal has come up for hearing after the Hon'ble Supreme Court vide order dated 19.03.2001 remanded the case back to this Court for decision afresh.

2. The correctness of the concurrent findings of fact arrived at by the Courts below is assailed by the plaintiffs in this second appeal. They were working as Chowkidars on temporary basis with the respondents. Because of reduction in the workload, their services were retrenched on 28.01.1993 after paying compensation as per the Industrial Disputes Act, 1947 (hereinafter referred to as the '1947 Act'). The suit filed by the plaintiffs has been dismissed by both the Courts below with the observations that the remedy, if any, lies only before the Tribunal constituted under the 1947 Act.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. On the one hand, the learned counsel representing the appellant while referring to the judgment passed in **Rajasthan State Transport Corporation and another Vs. Bal Mukand Bairwa, 2009 (4) SCC 299**, submits that the option is with the workman to file civil suit or approach the Tribunal constituted under the 1947 Act. He submits that the appellants does not wish to press the relief under the 1947 Act and they wish to enforce their right of regularization as per the policy of the respondents.

5. On the other hand, the learned counsel representing the respondent submits that as per the policy of the respondents, the employee can be regularized only if there is availability of the work. He submits that the services of the temporary employee cannot be directed to be regularized in absence of workload.

6. In para 23, the Supreme Court while relying upon its previous judgment in **Rajasthan State Transport Corporation and others Vs. Mohar Singh, 2006 (5) SCC 542**, held as under:-

"23. If an employee intends to enforce his constitutional rights or a right under a statutory Regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Order certified under the 1946 Act ipso facto the Civil Court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in Rajasthan State Road Transport Corporation & ors. vs. Mohar Singh [(2008) 5 SCC 542]. The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the fact of each case.

If the infringement of Standing Order or other provisions of the Industrial Disputes Act are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

Where the relationship between the parties as employer and employee is contractual, right to enforce the contract of service depending on personal volition of an employer, is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status, i.e., his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory Regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.

Appellant-Corporation is bound to comply with the mandatory provisions of the statute or the regulations framed under it. A subordinate legislation when validly framed becomes a part of the Act. It is also bound to follow the principles of natural justice. In the event it is found that the action on the part of State is violative of the constitutional provisions or the mandatory requirements of a statute or statutory rules, the civil court would have the jurisdiction to direct reinstatement with full back wages.

In *Praga Tools Corpn. Vs. C.A. Imanuel (1969) 1 SCC 585*, it was held:-

"6.... Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of

the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities."

7. In this case, the learned counsel representing the appellant failed to draw the attention of the Court to the appellant's constitutional or a right under any statutory regulation to seek regularization of their service. The Supreme Court has carved out exception only if the employee intends to enforce his constitutional or a right under a particular statute.

8. On the other hand, the learned counsel representing the respondent draw the attention of the Court to another judgment of the Supreme Court in **Jitendra Nath Biswas Vs. M/s Empire of India and Ceylone Tea Co. and another, (1989) 3 SCC 582.**

9. This Court has considered the submissions of the learned counsel representing the parties.

10. The appellants are now restricting their relief to regularization. It is evident that the services of appellant No.1 were dispensed with after he serve for a period of 7 and ½ (half) years, whereas, the services of the appellant No.2 were terminated after nearly 10 years. They are no longer in service from 28.07.1993. As already noticed, the learned counsel representing the appellant has failed to draw the attention of the Court to any policy adopted by the State, which forces the employer to regularize the service of temporary employee even if such temporary employees have become surplus. The appellants were retrenched from service in accordance with the provision of the 1947 Act. The learned counsel representing the appellants has already made statement that he does not wish that the

appellants should be relegated to the remedy under 1947 Act. In view of the judgment passed by the Supreme Court in **Rajasthan State Transport Corporation’s case (supra)**, the appellants are entitled to the relief from the Civil Court only if they prove infringement of their constitutional provision or statutory provision.

11. Keeping in view the aforesaid facts, the appeal is dismissed, through, for different reasons from the reasons given by the Courts below.
12. All the pending miscellaneous applications, if any, are also disposed of.

January 23rd, 2024

(ANIL KSHETARPAL)
JUDGE

Ay
Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No