

Neutral Citation No.
CWP-16572-2013

2024.PHHC.066481



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-16572-2013

Date of Decision:10.05.2024

THE BATHINDA DISTRICT COOPERATIVE MILK
PRODUCERS UNION LIMITED, MILK PLANT, BATHINDA
THROUGH ITS GENERAL MANAGER

.... Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
BATHINDA AND ANR

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. A.S. Chadha, Advocate for the petitioner.

Mr. Bhanu Partap Singh, Advocate for respondent No.2.

SANJAY VASHISTH, J.(Oral)

1. Instant writ petition has been filed by The Bathinda District Cooperative Milk Producers Union Limited, Milk Plant, Bathinda (Management), challenging the order dated 21.05.2013 (Annexure P-9), whereby learned Labour Court, Bathinda has answered the reference No. 160 of 2005, filed under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), in favour of respondent No.2-Sarabjit Singh (workman).

Learned Labour Court held the termination of the workman to be illegal and in violation of Section 25-F of the Act of 1947, and also held workman to be entitled for reinstatement with



continuity of service alongwith 30% back wages from the date of demand notice i.e. 04.04.2005 till joining.

2. Pleased case of the workman was that he was appointed as Unskilled Worker (Temporary) on 01.11.2002 and worked upto 31.07.2003. In August, 2003, he was again appointed and worked upto 07.11.2003. The workman was again appointed in November 2003 and he worked upto 23.02.2004. Thereafter, the services of the workman were terminated. The workman was terminated without any notice, charge-sheet, enquiry, notice pay or retrenchment compensation. Thus, he claimed that his removal from service is in violation of Sections 25-F, 25-G and 25-N of the Act of 1947. It was further pleaded that the workman continuously worked for more than 240 days in a Calendar year in the preceding one year of his termination and was getting a salary of Rs.2,100/- per month.

3. In the written statement filed by the petitioner-Management, apart the preliminary objections, it has been pleaded that the workman was employed as Unskilled worker only on contract basis. The workman submitted his application in the Month of October 2002 and he was engaged on 01.11.2002 to 31.07.2003. He had accepted the terms and conditions of the appointment. On submitting another application, he was again appointed in August, 2003 with the same terms and conditions for the period 11.08.2003 to 07.11.2003. Thereafter, he was again appointed for the fixed term



alongwith the terms and conditions, which were duly accepted by the workman. His period for re-appointment was 24.11.2003 to 23.02.2004. However, thereafter, the service period of the workman was not continued. The fact of working of 240 days in a Calendar year by the workman has also been disputed by the Management.

4. On examination of the appointment letters and the relieving letters appended with the writ petition and also discussed by the Labour Court in paragraph No.11 onwards in its award, this Court finds there is no dispute of the working period/tenure of the workman and the written terms and conditions upon which the workman had been appointed. Thus, the working of more than 240 days of the workman in the preceding one year of his termination cannot be anymore a disputed fact. But, a surprising fact has been noticed from all the appointment letters that undoubtedly, the workman has been appointed as Un-skilled worker on contract basis, however, without detailing therein the nature of services he has to perform. Thus, from the said appointment letters, it cannot be concluded that the workman was appointed for a particular work/project and after its completion, his services were no longer required being a temporary/unskilled worker.

For reference, the first appointment letter dated 01.11.2002, is reproduced herebelow in verbatim:

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*“THE BATHINDA DISTT. COOP. MILK
PRODUCERS UNION LIMITED, MILK PLANT,
BATHINDA*

NO. BMU/ADMN/8948

DATED 1-11-02

*Sh. Sarbhjit Singh
S/O Sh. Balvir Singh,
Guru Nanak Pura Mohalla,
Rampura Phul, Distt. Bathinda.*

***Subject: ENGAGING AS UNSKILLED
WORKER (TEMP) ON CONTRACT BASIS.***

*A temporary requirement of
Unskilled Worker (Temp), has arisen under this
Milk Union for specific period 01.11.2002 to 31-
7-03. You are hereby engaged as Unskilled
Worker (Temp) on contract basis on fixed wages
as fixed under the Minimum Act.*

*In case the Management decided the
period of the temporary employment can be
extended for further fixed period. However if the
period is not further extended, the contract of
your employment shall stand automatically
terminated after the expiry of the original or
extended of employment as the case may be.*

*This contractual employment will be
liable to termination even before the expiry of the
above stipulated period, in case you are not
found suitability for this work, ceases to exist.*

*General Manager
Milk Union, Bathinda*

*I Hereby accept the appointment as Unskilled
Worker (Temp) on fixed Wages on the above
mentioned terms and conditions.*

SIGNATURE OF WORKER”

5. Surprisingly, instead of removing the workman on 31.07.2003 i.e. the last date upto which he was appointed, his services were continued by issuing a separate appointment letter. Thus, the established fact available on record is that time and again, workman was relieved from the duties assigned to him. For the purpose of his



continuing, the workman was firstly relieved from service and then a fresh appointment letter was issued to him. Undoubtedly, such a practice is adopted to create a break in service, which in the eyes of law is unfair labour practice.

Had there been any specific work assigned to the workman and thereupon, with the pendency of the work, workman is continued in service by the Employer, one could understand that in reality, the work pending with the Management is not of permanent nature and it requires only a worker on the contractual basis for a particular time period. However, not mentioning of the duties or the nature of work in any of the appointment letter or even in the relieving letter, creates a big doubt in the mind of the Court that all kind of necessary work which the workman could perform, was got done through him. Thus, his duties were assigned as per the whims and fancies of the employer.

6. Even, not mentioning of any reason in the relieving letter as to why the workman is being relieved and therefore, no more services are required; also creates suspicion that the exercise of relieving the workman is only for the purpose of creating breaks in the service.

7. Even otherwise also, this Court is well satisfied with the reasoning given by Labour Court in paragraph No. 11 of its award and

granting of the back wages to the extent of 30 % also appears to be genuine relief, balancing the scale of equity.

8. Thus, this Court does not find any substance in the petitioner’s plea and there is no reason to cause any kind of interference in the well reasoned findings recorded by learned Labour Court and accordingly, **the present writ petition is hereby dismissed.**

May 10, 2024	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no