

Neutral Citation No: 2024 PHHC 060559
CWP-17285-2022



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-17285-2022
Decided on: 15.05.2024
.....Petitioner

BALWINDER KAUR

Versus

SECRETARY TO GOVERNMENT, EDUCATION
DEPARTMENT PUNJAB, CHANDIGARH AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ravi Gakhar, Advocate for the petitioner.

Mr. Amit Chaudhary, DAG, Punjab.

SANJAY VASHISTH, J.(Oral)

1. Through instant writ petition, Balwinder Kaur-Worklady has challenged the award dated 08.02.2022 (Annexure P-1), passed by the Industrial Tribunal-cum-Labour Court, Patiala, whereby reference No. 132 of 2018, filed under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short, the Act of 1947) has been answered in her favour, however, same has been disposed of by granting a lump sum amount of compensation of Rs.25,000/- as well as Rs.5,000/- towards litigation expenses.

2. Through the demand notice dated 12.04.2018, Balwinder Kaur-worklady pleaded that she joined the Government Middle School, Janherian, as 'Cook' on 01.01.2010. However, without assigning any reason, issuing show cause notice or charge-sheet, conducting enquiry or paying retrenchment compensation, her



services were terminated on 01.09.2017. Thus, by pleading that the worklady worked with the Management from 01.01.2010 to 31.08.2017 for about more than seven years and six months, she has been illegally terminated from the services. It was also pleaded that at the time of removal from service, she was drawing salary at the rate of Rs.1,700/- per month.

3. In response to the claim, respondent-Management took a stand that infact the worklady had joined on 01.08.2011 but in consequence to the resolution dated 08.07.2011 passed by the School-Management Committee, the correct date of joining of service is 08.07.2011 and not 01.01.2010. However, there is no denial to the date of termination from the service.

4. Infact worklady worked as Mid day Meal cook-cum-Helper alongwith some other employees. Management also pleaded that Balwinder Kaur-worklady is the junior most 'cook' and there is nothing wrong in terminating her services. It was further pleaded that as per the requirement of the work of cooking, the services were obtained. Thus, there being no definite work and as per the terms of the appointment letter, she could be terminated at any point of time.

5. After framing total four issues, learned Tribunal examined the evidence and other material available on record. It was noticed that as per the instructions of Head office of Mid Day Meal



Society, Punjab, the cook-cum-Helper has to be appointed as per the following ratio:

Sr. No.	No. of students	No. of cook-cum-Helper
1.	1-25	1
2.	26-100	2
3.	101-200	3
4.	201-300	4

6. While appointing the worklady, vide resolution dated 08.07.2011, it was clearly decided that the strength of the school children was increasing to the level of 131, therefore, One Mid Day Meal Cook-cum-Helper is required. It was also resolved that in case of downfall in the strength of the school children, the worker shall be removed.

7. Lastly, Labour Court concluded that the worklady had worked for 240 days in the preceding one year of her termination and there was a clear admission of the witness of the Management i.e. MW1 that no seniority list of Mid Day Meal Cook was maintained on district level by the DEO. It has also been admitted by MW1 that Punjab Civil Service Rules are not applicable to the worklady.

8. Infact, the stand of the respondent is that the services were terminated after receiving of the instructions from the Head Office, however, the Labour Court concluded that the said action is not conclusive. Therefore, held that the termination as bad and in violation of provisions of Section 25-F of the Act of 1947.



For reference, relevant and extracted findings recorded by learned Tribunal in its award is reproduced herebelow:

“ The services of the claimant with the respondent till 31-08- 2017 has not been denied, It has been contended that "intimation was given to the applicant regarding her termination and moreover her last wages were also paid to her on 27-10-2017". It is further contender that in this case no Civil Service Rules are applicable for the applicant, hence no charge-sheet, enquiry or payment of compensation is required as per law..

MWI during. his cross examination has deposed that "Balvinder Kaur worked with the respondents for six year. It is correct that applicant was getting salary Rs. /700/-p.m. It is correct that I have read any notice before passing the order dt. 21-08-2017, the copy of same is Ex. WY volunteered I have not to issue any notice to the applicant just have passed the order as per instructions received by the DGSC Punjab Chandigarh, DFO Elementary Education Patiala and BEPO (Block Education Primary Officer) Patiala-. I is correct that services of the petitioner were terminated in the year 2017. No seniority list of Mid day meal cook was maintained on district level by the DEO. It is correct that no Punjab Civil Service Rules are applicable to the petitioner."

Admittedly, the claimant worked for 240 days continuously with the respondent in the last calendar year preceding, the date of Claimed termination i.e. 01.09.2017.

The argument on the basis of the contention in the written statement to the extent that Civil Service Rules are not applicable and that the claimant was removed from service as per instructions of the Head Office is not sustainable. The rights of the claimant/workman' under the I.D. Act. 1947 are independent and germinate in favour of the claimant on completion of continuous 240 days during the preceding calendar year and violation thereof.

It has been pleaded and argued on behalf of the claimant that juniors have been retained in service and therefore, there is violation on behalf of the respondents, however, the argument is not sustainable since apart from bald assertions in the claim no evidence has been led in corroboration of the claim. Whereas respondents have contended that "That the applicant Balwinder Kaur was the junior most amongst the Mid Day Meal Cook cum Helpers working in Government Middle School Janherian, Distt. Patiala. That the other Mid Day



Meal Cooks cum Helpers are working in GMS Janherian namely 1. Smt. Raj Kaur appointed on 15-08-2008, 2. Smt. Sarabjeet Kaur appointed on 15-08-2008 whereas the applicant was appointed on 01-08-2011. Fhat 1 it is crystal clear that Balwinder Kaur W/o. Sh. Ram Dass was the junior most amongst the other Mid Day Meal Cook cum Helpers working in the school, It is also wrong that respondents have engaged new workers in place of applicant after terminating her services"

Further during cross examination claimant has admitted that "It is correct that I was appointed in the school after appointment Of Raj Kaur and Sarabjit Kaur and I am junior to both"

The above is sufficient to conclude that claimant/workman completed service of 240 days in the year immediately preceding the date of his termination and' his services were terminated without any notice, charge-sheet, enquiry or payment of compensation, Thus, services of the claimant/workman were terminated in violation of Section 25-F of the I.D. Act 1947. Accordingly, issue No.1 is answered in favour of the claimant/workman and against the respondents."

Learned Labour Court while holding that there is violation of provisions of Section 25-F of the Act of 1947, awarded a lump sum amount of compensation of Rs.25,000/- as well as Rs.5,000/- towards the litigation expenses.

9. Learned counsel for the petitioner argues that though, the worklady deserves reinstatement with continuity in service alongwith full back wages, however, taking note of the fact that she lastly served the department about seven years back, the worklady would feel satisfied, if the substantial amount of compensation is awarded taking into consideration the total length of service in consonance with the high cost of living required for survival in the present era.

10. On the other hand, Mr. Amit Chaudhary, DAG, Punjab, is not in a position to counter the findings recorded by learned Labour



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Court, for two reasons i.e., firstly a reasoned award has been passed by the Labour Court and secondly, the said award has never been challenged by the respondent-Management.

11. Taking note of the salary of Rs.1,700/- per month and admitted length of service rendered by the worklady to the Department, this Court deems it appropriate to award a lump sum compensation of Rs.50,000/- per year for which she worked with the Management and therefore lump sum compensation amount is ordered as Rs.3,50,000/- (Rupees three lacs fifty thousand). In addition to the said lump sum compensation amount, another sum of Rs.50,000/- is awarded towards litigation expenses, pain and agony suffered by the worklady.

12. Therefore, Management is directed to pay a lump sum amount of compensation of Rs.3,50,000/-(Rupees three lacs fifty thousand) + Rs.50,000/- (Rupees fifty thousand) = Rs.4,00,000/- (Rupees Four lacs) in total towards all the claims raised by her through the demand notice dated 12.04.2018, within a period of three months from today i.e. on or before 15.08.2024, failing which, **Management would be liable to pay the lump-sum amount of compensation of Rs.4,00,000/- (Rupees Four lacs) along with interest @ 6% per annum, from the date of passing of this order i.e. 15.05.2024.**

However, it is made clear that over and above the said amount of lump sum compensation of Rs.3,50,000/-(Rupees three lacs fifty thousand) and Rs.50,000/- (Rupees fifty thousand) for litigation expenses etc, worklady would not be entitled for any other relief in any manner before any other forum also.

13. With the aforesaid observations, the present writ petition is disposed of.

15.05.2024	[SANJAY VASHISTH]
rashmi	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no