

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: April 18, 2024

Sr. No.	Case No.	Case Title		Reference No. before Labour Court
		Petitioner(s)	Respondent(s)	
01	CWP-20416-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	98 of 2015
02	CWP-20344-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	105 of 2015
03	CWP-20415-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	99 of 2015
04	CWP-20417-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	100 of 2015
05	CWP-20418-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	103 of 2015
06	CWP-20419-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	104 of 2015
07	CWP-20420-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	101 of 2015
08	CWP-21053-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	106 of 2015

CWP-20416-2017 (O&M) & connected petitions - 2 -

09	CWP-21082-2017 (O&M)	Vaish College of Engineering, Rohtak	Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another	102 of 2015
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CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

ARGUED BY:

For Vaish College of Engineering, Rohtak	: Mr. Vijay Kumar Jindal, Senior Advocate, with Mr. Lokesh Sharma, Advocate, and Mr. Pankaj Gautam, Advocate.	in all 09 Writ Petitions
For respondent No. 2 - Workman	: Mr. Sunil Kumar Nehra, Advocate, and Mr. Lalit Rishi, Advocate.	in CWP Nos. 20344, 20415, 20416, 20417, 20418, 20419, 21053 & 21082 of 2017
	Mr. Sandeep Singal, Advocate	in CWP No. 20420 of 2017

SANJAY VASHISTH, J.

1. This common judgement shall dispose of aforementioned 09 writ petitions because common questions of law and similar facts are involved, in this bunch of petitions.
2. These petitions have been filed by petitioner - Vaish College of Engineering, Rohtak, being the management, assailing separate nine awards, dated 27.02.2017, passed by the Industrial Tribunal-cum-Labour Court, Rohtak (here-after referred to as, ‘the Tribunal’), in respective references (as depicted in the above table), which were instituted by respondent No. 2 – Workmen, directly before the Tribunal, in terms of

amended provision of Section 2A of the Industrial Disputes Act, 1947 (for short, 'the Act'), whereby references have been answered in favour of the workmen. In all the 09 cases, the workmen have been held entitled for reinstatement with continuity of service, full back wages, and all other consequential benefits.

3. For the reason that the facts of these petitions are identical, to avoid repetition and for the sake of brevity, the facts as pleaded in CWP No. 20416 of 2017, are being referred in subsequent paras of this judgement, by treating the same as lead case.

4. As per pleaded case of respondent No. 2/workman – Sahil Goyal (in CWP-20416-2017), he was appointed as a Lab Technician with the petitioner/management on 30.09.2009, on regular basis after publication of said post in newspaper, interview and other formalities. The pay scale of the workman was revised to Rs.5200-20250+1900 AGP plus other allowances w.e.f. 16.01.2012. However, his services were terminated on 08.05.2015, on the premise that his appointment was not through proper channel. Claiming that he had worked continuously for more than 240 days in a calendar year, and termination of his services was in violation of the mandatory provisions of Sections 25F, 25G and 25H of the Act, the workman approached the Tribunal, by filing his claim statement under Section 2A of the Act.

5. Petitioner/management contested the claim of the workman by pleading in the written statement that the Tribunal has no jurisdiction to adjudicate the claim petition, because of setting up of the Educational

Tribunal by the Government, for dealing with the cases of the employees of the educational institutions. It was further pleaded that appointment of the workman was illegal since the very inception, and being surplus, he was removed from service in just and fair manner. However, it was admitted that the workman was employed as Lab Technician in the Computer Science and Engineering Department on adhoc basis at a consolidated salary of Rs. 5,000/-, vide order dated 30.09.2009, and after revision of pay, his basic pay was fixed as Rs.7,100/- w.e.f. 01.01.2012, vide order dated 16.01.2012. Denying the appointment of the workman on regular basis, it was stated that a cheque of Rs. 42,294/-, as three months' salary in lieu of notice, was sent to him by registered cover. Hence, the petitioner/management prayed for dismissal of the reference.

6. After filing of replication, following issues were framed by the Tribunal:

“(1). Whether termination of services of workman is justified and if not, to what relief he is entitled? OPW.

(2). Relief.”

7. After analyzing the pleadings and evidence adduced by respective parties, the Tribunal answered the reference in favour of the workman by holding that the petitioner/management has violated the mandatory provisions of Sections 25F, 25G and 25H of the Act, while terminating the services of the workman. The observations made by the Tribunal in para Nos. 14 to 17 of its award dated 27.02.2017, in Reference No. 98 of 2015, which is subject matter of challenge in CWP No. 20416 of

2017, says as under:-

“14. After hearing both the sides and appreciating the entire evidence adduced in the case, I am of the considered opinion that the present petition deserves to be allowed. Admittedly, the petitioner was appointed on 30.09.2009 and he was removed on 8.5.2015 and he continuously rendered service with the respondent during the said period. Therefore, he had completed 240 days in the preceding 12 calendar months of his termination. Though, as per the termination order dated 8.5.2015, the petitioner was made payment in lieu of notice but no retrenchment compensation in terms of Section 25F of the Industrial Disputes Act, 1947, was admittedly, given to him. Thus, there is non-compliance of Section 25F of the Industrial Disputes Act, 1947. This fact has also been conceded by the learned AR for the respondent during the course of arguments. Further, as per the termination order dated 8.5.2015, the petitioner was relieved of his duty on the ground that his appointment was not through proper channel. The said termination order has been exhibited in evidence and it does not make any mention that services of the petitioner were terminated on the ground of the staff being rendered surplus. There is nothing to show as to what was the ‘proper channel’, through which, services of the employees like the petitioner, were to be hired. In fact, admittedly, the petitioner had worked for several years with the respondent and appraisal of his work and conduct was also done from time to time and he was granted the higher scale. Therefore, plea of the respondent that appointment of the petitioner was not ‘through proper channel’ is a farce and, thus, not sustainable in law. As regards the plea of the respondent that there have been less admissions during the preceding years and, hence, post of the petitioner was rendered surplus, is concerned, this fact is also not proved by the respondent. Though, the respondent has produced on record an extract of the admissions made from the year 2012 to the year 2016 as Ex.M5A but the same has no evidentiary value. The original record, from which, the Extract Ex. M5A was prepared, has not been produced in the Court. Sh. Mohit Kumar Aggarwal (MW1), in whose evidence, the Extract Ex. M5A was exhibited, has stated that he had not seen the original record, from which, the Extract Ex.M5A was prepared nor he had brought the same before the Court. He further stated that he had not prepared the Extract Ex.M5A nor he had checked the record in this regard. He further stated that the Principal had prepared the same but he has not stepped into the witness box. Thus, the Extract Ex.M5A has no evidentiary value and the same does

not conclusively prove that there is a decline in the admission of students with the respondent in the preceding years. Therefore, the respondent has failed to prove that removal of the petitioner is on account of the fact that the staff was rendered surplus. In fact, it is proved on the record from the appointment letters Ex. W1, Ex. W-2 and Ex.W3 that fresh appointments of Lab Technicians were made by the respondent and the said appointees are still working. Admittedly, no seniority list was displayed on the notice board or circulated to the petitioner before his removal. Thus, the extract of the seniority list Ex.M4A in respect of the Lab Technicians and Lab Assistants has no value, moreso when, the concerned record in respect of the same has also not been produced. Therefore, it follows that there is also a contravention of Sections 25G and 25H of the Industrial Disputes Act, 1947.

15. *As a sequel to what has been discussed above, it is held that the respondent has violated the mandatory provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947, in terminating the services of the petitioner.*

16. *Now, the question arises as to whether the petitioner is entitled to reinstatement or he is entitled only to the compensation in lieu thereof. In **Sports Authority of India Vs Sunil Kumar** reported as 2016(2) Recent Services Judgments, page 400, it was laid down by the Hon'ble Supreme Court that non compliance of the provisions of Section 25F, clauses (a), (b) and (c) of the Industrial Disputes Act, 1947, renders the order of termination void and, therefore, the concerned workmen were entitled to reinstatement and award of full back wages, was justified. Further, it was held by our own Hon'ble High Court in **Rakesh Kumar Aggarwal Vs The Management of M/s. Milk Plant, Ambala** reported as 1992(2) Recent Services Judgments, page 466, that Section 25(B) (2) of the Industrial Disputes Act, 1947, does not make any distinction between those employed on regular wages and those employed on daily wages. It was further held in the said authority that where the workman had completed 240 days, termination of his services was in the nature of retrenchment and this could be done only by following the procedure and complying with the conditions given in Section 25F of the Industrial Disputes Act, 1947. Further, in **Jasmer Singh Vs State of Haryana and another** reported as 2015(3) Recent Services Judgments, page 517, it was held by the Hon'ble Supreme Court that where there was violation of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947, and the*

*finding of the Labour Court was that the workman had worked for more than 240 days, his termination was bad and he was entitled to reinstatement with full back wages and continuity of service. Further, in **Chinti Devi Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, District Panipat and another** reported as 2014(2) Recent Services Judgments, page 3, it was held by our own Hon'ble High Court that where finding of the Labour Court was that the workman had worked for five years but instead of reinstatement, he was awarded lump-sum compensation, the award was set aside by the Hon'ble High Court and the workman was directed to be reinstated in service. The authorities referred to above are squarely applicable to the facts of the present case. Therefore, in the present case, the petitioner is entitled to reinstatement with continuity in service, full back wages and all other consequential benefits. Accordingly, it is held that the petitioner is entitled to reinstatement with continuity in service, full back wages and all other consequential benefits. Thus, this issue is decided in favour of the petitioner.*

Issue No.2 Relief

17. *In view of my findings on issue No.1, the present claim petition is allowed and the petitioner is directed to be reinstated with continuity of service, full back-wages and all other consequential benefits. The reference is accordingly, answered in favour of the petitioner in the terms aforesaid. File be consigned to the record room."*

8. It requires to be noticed here that when these 09 writ petitions alongwith four Civil Revision Nos. 4339, 4343, 4354 and 4350 of 2018, came up for consideration on 03.10.2018, before a Co-ordinate Bench of this Court, the same were disposed of by observing as under:-

“7. *Having considered the submissions made by learned counsel for the parties and appraisal of the record as also the view taken by Hon'ble Apex Court in the judgment in **T.M.A. Pai Foundation's case (supra)**, this Court is of the considered view that after the Educational Tribunal coming into force, all disputes except gratuity matters are to be referred to it (Educational Tribunal). Similar view was taken by Hon'ble Division Bench of this Court in **Suman Kajla Vs. State of Haryana and others, 2007 (5) SLR 329**; and Co-ordinate Benches of this Court in **Dr. Mukul Gupta Vs.***

Industrial Finance Corporation of India Limited and others, 2015(4) SCT 380; and Rashmi Arora Vs. DAV College Managing Committee and others, 2017 (2) SCT 615.

8. *Learned Tribunal has erred in deciding the industrial disputes and allowing reinstatement to the workmen with continuity of service, full back wages and all other consequential benefits. In fact, as per view taken by Hon'ble Apex Court in T.M.A. Pai Foundation's case (supra), the Tribunal should have returned the reference unanswered with liberty to the workmen to avail the remedy of filing appeal before the Educational Tribunal.*

9. *Resultantly, the present writ petitions as well as the revision petitions are accepted and the impugned awards/orders are set aside. The workmen may avail their remedy of filing appeal before the Educational Tribunal. In case there is any dispute regarding grant of gratuity, the workmen will be well within their rights to challenge the same before appropriate authority. The authorities concerned under the Act are requested to consider the delay application, if any sympathetically and entertain the claim of the workmen. Even the question of res-judicata shall not arise in view of this later development.*

10. *All the 09 writ petitions and 04 revision petitions stand disposed of in the above terms."*

9. The aforementioned order dated 03.10.2018, was assailed by respondent No. 2-workmen, by filing 09 LPA Nos. 1554, 1580, 1581, 1582, 1585, 1593, 1594, 1667 and 1726 of 2018. The Hon'ble Letters Patent Bench, vide judgement dated 23.02.2023, remanded the matter to Single Bench for fresh decision on merits as to whether the award is liable to be sustained or not. It is also pertinent to mention that the Hon'ble Letters Patent Bench while passing the judgement dated 23.02.2023 has noticed the entire factual and legal proposition of law in detail, especially the fact that the workmen had approached the Educational Tribunal within 5 months of their termination, and later on had given a statement that they would like to

raise an industrial dispute regarding their termination of services, and they were granted liberty vide order dated 8.10.2015, passed by the District Judge, Rohtak, to raise the industrial dispute regarding termination of their services. And, the said order dated 8.10.2015 was passed in the presence of the counsel for the petitioner/management.

10. During pendency of the writ petitions, respondent No. 2 – workmen also initiated the execution proceedings before the Civil Court at Rohtak, against the petitioner/management, there being no stay of the operation of impugned award(s) dated 27.02.2017. They have also filed application for attachment of the bank accounts of the petitioner/management. Thereupon, the Executing Court of Civil Judge (Junior Division), Rohtak, passed the orders of attachment of bank accounts of the petitioner/management and also issued warrants of attachment qua Bank Accounts bearing Nos. 522102010048753 and 522102010007025 in Union Bank of India; and Bank Account Nos. 0948000100195151 and 0948000100219442 in Punjab National Bank. Copy of one such order dated 22.03.2024, passed in Execution No. 50 of 2023, titled as “Sahil Goyal v. The Principal Vaish College of Engineering”, and warrant of attachment/letter dated 03.04.2024, have been placed on record by the petitioner/management, by filing CM-6374-2024 in CWP-20416-2017. Even the concerned bank authorities have frozen the aforementioned bank accounts of the petitioner/management, in compliance of the directions issued by the Executing Court.

11. The petitioner/management also moved miscellaneous

application(s), seeking stay of operation of the orders of attachment of bank accounts and warrants of attachment, passed/issued by the Executing Court in execution proceedings, initiated by different workmen, who are respondent Nos. 2 in respective writ petitions. In one such application bearing CM-21726-CWP-2023 in CWP-20420-2017, the Co-ordinate Bench of this Court, has passed the following order on 22.12.2023:-

“CM-21726-CWP-2023:

Prayer in the present application is for staying the operation of attachment orders (Annexure A-2) and warrants of attachment (Annexure A-3) passed by the learned Executing Court. A further prayer has been made that applicant/petitioner may be permitted to continue to operate its attached bank account, during the pendency of the main writ petition.

Learned senior counsel for the applicant/petitioner submits that the main writ petition has been filed by the applicant/petitioner-College, challenging the impugned award dated 27.02.2017 (Annexure P-13), whereby the Tribunal below had answered the reference in favour of respondent No.2 (Akshay) and it was directed that he be reinstated with continuity in service, full back wages and all consequential benefits.

Learned senior counsel for the applicant/petitioner further submits that in pursuance of the aforesaid award dated 27.02.2017 (Annexure P-13), respondent No.2 was reinstated in service and is still continuing in service with the petitioner-College. Learned senior counsel for the applicant/petitioner states that as regards the monetary benefits, respondent No.2 had filed an execution application before the Civil Court at Rohtak, wherein respondent No.2 had filed an application for attachment of Bank Accounts of the applicant/petitioner on 25.08.2023 (Annexure A-1). It is stated that in the execution application, even the details/calculations of amount sought to be recovered is not maintained, however, be that as it may, the Civil Court/Executing Court has passed attachment order dated 06.12.2023 (Annexure A-2) and has further issued warrants of attachment dated 12.12.2023 (Annexure A-3). It is

further stated by learned senior counsel for the applicant/petitioner that on the basis of the attachment orders/warrants of attachment, the Union Bank of India, VTI, Rohtak has frozen the Bank Account Nos.522102010007025 and 522102010048753 of the applicant/petitioner-College. It is contended that although no amount is forthcoming either from the execution application or in the attachment orders/warrants of attachment, however, as per the calculations made by the applicant/petitioner-College, the amount to be recovered by respondent No.2 from the applicant/petitioner-College would not be more than Rs.7 Lacs. Learned senior counsel for the applicant/petitioner submits that applicant-petitioner is ready to deposit the said amount of Rs.7 Lacs with the Executing Court by way of the Fixed Deposit Receipt (F.D.R.) within a period of ten days from today, subject to final outcome of the main writ petition, however, the applicant/petitioner may be permitted to operate the aforesaid Bank Account Nos.522102010007025 and 522102010048753 and suitable directions be issued for de-freezing the said accounts.

Notice in the application for 10.01.2024.

In the meanwhile, it is directed that in case the applicant/petitioner deposits an amount of Rs.8 Lacs by way of the Fixed Deposit Receipt (F.D.R.) with the Executing Court within a period of ten days from today then upon such deposit, the applicant/petitioner be permitted to operate the aforesaid two Bank Account Nos.522102010007025 and 522102010048753 and the said Bank Accounts be de-freeze.

It is made clear that the aforesaid direction is only by way of interim measure which shall be subject to final outcome of the main writ petition. ”

12. Mr. Vijay Kumar Jindal, learned Senior counsel for the petitioner-management, states that much water has already flown since passing of the impugned award(s) by the Tribunal, and filing of present writ petitions before this Court. He fairly admits that in none of the writ petitions, operation of the impugned award(s) have been stayed and as a consequence thereof, respondent No. 2 – workmen in respective cases have

already been reinstated in service by granting all service benefits. The only issue which remains to be adjudicated is with regard to 'payment of full back wages' to the respective workmen.

In this regard, learned Senior counsel, on being instructed by Mr. Rohit Kumar, Administrative Officer & O.S.D. to President, Vaish Education Society (Registered), Rohtak, who is present in person in the Court on behalf of the petitioner/management, states at the Bar that the petitioner/management, in fact, is not interested in challenging the impugned award(s) dated 27.02.2017, passed by the Tribunal, on its merits, as the same has already been implemented in part. Therefore, Mr. Jindal proposes for considering the prayer of the petitioner/management for grant of '50% back wages' to respondent No. 2 – workmen in all the 09 cases, instead of 'full back wages', as has been awarded by the Tribunal in their favour. He further submits that if the impugned award(s) is/are modified to that extent only, the petitioner/management is ready and willing to comply with the remaining direction of the Tribunal regarding payment of back-wages, at the earliest, for the better administration of justice.

13. Learned counsel for respondent No. 2 – workmen in these petitions, put forth the proposal of the petitioner/management to their respective clients, and after receiving instructions from them, made a candid statement at the Bar that respondent No. 2 – workmen are agreeable to accept the aforementioned proposal of the petitioner/management, provided that their complete dues are paid by the petitioner/management within a reasonable time frame, failing which liberty be granted to them to further

pursue the execution petitions, in accordance with law.

14. In view of the consensus arrived at between both the parties; the statements made by their respective counsel; and considering the circumstances enumerated hereabove, this Court is of the opinion that no material issue is left to be adjudicated by this Court in these proceedings.

15. Accordingly, while maintaining the findings recorded by the Tribunal, answering the references in question in favour of the workmen qua termination of their services and reinstatement, the impugned award(s) dated 27.02.2017, is/are upheld, with the only modification to the extent of back wages. Thus, it is ordered that respondent No. 2 – workmen in these petitions, shall be entitled to **50% back-wages** instead of **full back-wages** and all other consequential benefits. Further, the petitioner/management shall make complete payment of 50% back-wages and other dues, if any, to respondent No. 2 – workmen, within a period of two months from today, failing which the award(s) dated 27.02.2017, passed by the Tribunal shall enure. In such eventuality, respondent No. 2 – workman will be entitled to claim ‘full back-wages’, as already ordered by the Tribunal.

16. As pointed out by learned Senior counsel, and also observed here-above, in some of the execution proceedings preferred by respondent No. 2 - workmen, the Executing Court has already passed orders for attachment of bank accounts of the petitioner/management and also issued warrants of attachment, therefore, to safeguard the interest of the petitioner/management and also enabling it to make payment(s) to respondent No. 2 – workmen, operation of such orders for attachment of

bank accounts as also warrants of attachment, issued by the concerned Executing Court, in different execution petitions instituted by respondent No. 2 – workmen herein, shall remain stayed till 01.07.2024 only. In case of non-compliance of the statement made on behalf of the petitioner/management today before this Court, it will be open for the Executing Court to proceed with the execution proceedings, in accordance with law.

17. With the above modification in the award(s) dated 27.02.2017, passed by the Tribunal in respective cases, and the direction concerning execution proceedings, all the 09 writ petitions and pending miscellaneous applications therein, are **disposed of** accordingly.

18. For compliance, Registry is directed to send a copy of this judgement to the learned District and Sessions Judge, Rohtak, with a direction to transmit the same forthwith to the concerned Executing Court, where proceedings for execution of the award(s) dated 27.02.2017, passed by the Tribunal in respective references, are pending.

(SANJAY VASHISTH)
JUDGE

April 18, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes/ No
Whether reportable?	✓ Yes/ No