

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Judgment Reserved on:24.04.2024
Judgment Pronounced on: April 30,2024

Sr. No .	Case No.	Case Title		Referen ce No. before Labour Court	Date of award
		Petitioner(s)	Respondent(s)		
01	CWP-23524 of 2017	Deputy Com- missioner(Col- lector), Ropar (Punjab) and others	Labh Singh and another	216 of 2008	24.05.2017
02	CWP-23527 of 2017	Deputy Com- missioner(Col- lector), Ropar (Punjab) and others	Sarabjit and another	215 of 2008	24.05.2017
03	CWP-23538 of 2017	Deputy Com- missioner(Col- lector), Ropar (Punjab) and others	Paramjit Singh and an- other	217 of 2008	24.05.2017
04	CWP-23539 of 2017	Deputy Com- missioner(Col- lector), Ropar (Punjab) and others	Jasvir Kaur and another	214 of 2008	24.05.2017
05	CWP-23540 of 2017	Deputy Com- missioner(Col- lector), Ropar (Punjab) and others	Naresh Ku- mari and an- other	220 of 2009	24.05.2017

06	CWP-23568 of 2017	Deputy Commissioner(Collector), Ropar (Punjab) and others	Satvinder Kaur and another	218 of 2008	24.05.2017
07	CWP-23578 of 2017	Deputy Commissioner(Collector), Ropar (Punjab) and others	Amarjit Singh and another	213 of 2008	24.05.2017
08	CWP-1481 of 2019	Naresh Kumari	Presiding Officer,Industrial Tribunal, Patiala and others	220 of 2009	24.05.2017
09	CWP-1498 of 2019	Satwinder Kaur	Presiding Officer,Industrial Tribunal, Patiala and others	218 of 2008	24.05.2017
10	CWP-1552 of 2019	Sarabjit Singh	Presiding Officer,Industrial Tribunal, Patiala and others	215 of 2008	24.05.2017
11	CWP-1618 of 2019	Amarjit Singh	Presiding Officer,Industrial Tribunal, Patiala and others	213 of 2008	24.05.2017
12	CWP-1621-2019	Jasvir Kaur	Presiding Officer,Industrial Tribunal, Patiala and others	214 of 2008	24.05.2017

13	CWP-1624 of 2019	Labh Singh	Presiding Of- ficer,Indus- trial Tribunal, Patiala and others	216 of 2008	24.05.2017
14.	CWP-1639 of 2019	Paramjit Singh	Presiding Of- ficer,Indus- trial Tribunal, Patiala and others	217 of 2018	24.05.2017

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

ARGUED BY:

For State/Management: Mr. Brijesh, Asst. A.G., Punjab.

For Workman(s): Mr. Ranjivan Singh, Advocate
Ms. Kanika Toor, Advocate and
Mr. Risham Raag Singh, Advocate
(in CWP Nos.1481,1498,1552, 1618, 1621,
1624, 1639 of 2019)

Mr. G.S. Saini, Advocate,
(in CWP Nos.23524, 23527, 23540, 23568,
23578 of 2017

SANJAY VASHISTH, J.

1. All the aforesaid 14 writ petitions would decide the fate of separate award(s) dated 24.05.2017, passed by the Industrial Tribunal-cum-Labour Court, Patiala(hereinafter referred as ‘the Tribunal’), while answering the references under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short, ‘the Act of 1947’), as depicted in the aforementioned table, whereby termination of the services of the

workman(s) has been held illegal and bad in law i.e. in violation of Section 25-F of the Act of 1947, and they have been entitled to be reinstated with continuity of service **but without back wages**.

Out of aforementioned 14 petitions, petitions mentioned at Sr. Nos. 01 to 07 have been filed by the Deputy Commissioner(Collector), Ropar (Punjab) and others (Management), for setting aside of the respective award(s) passed by the Tribunal, whereas petitions mentioned at Sr. Nos. 08 to 14 have been filed by the workman(s) seeking modification of the award by granting full back wages.

2. Learned counsel for the the parties are in unison that the decision of one writ petition, by examining one of the award passed by the Tribunal, would cover all the issues involved in respective references, which were referred for adjudication to the Tribunal. Moreso, the facts of these petitions are identical.

Accordingly, to avoid repetition and for the sake of brevity, **the facts as pleaded in CWP No. 23524 of 2017**, are being referred in subsequent paras of this judgement, by treating the same as lead case.

3. Petitioners-Deputy Commissioner(Collector), Ropar, Punjab and others (being Management) have filed the present writ petition

challenging the award dated 24.05.2017(Annexure P-1), passed by the Industrial Tribunal-cum-Labour Court, Patiala, whereby reference No.216 of 2008, under Section 10(1) (c) of the Act of 1947 has been answered partly in favour of respondent No.1-Labh Singh (workman).

4. Plead case of the workman before the Labour Court is that he worked with the Management as Data Entry Operator from 11.11.1991 to 30.06.1995. At the time of termination from service, workman was drawing the salary of Rs.3,000/- per month. The services of the workman were terminated w.e.f. 30.06.1995, without any notice, notice pay or retrenchment compensation. Further pleaded that even, some of the new employees junior to the petitioner are still working with the Management. Thus, workman prayed for reinstatement in service with its continuity and full back wages, as the alleged termination is bad in law and against the principles of natural justice.

5. To counter the pleadings, Management filed its written statement and pleaded that material facts have been concealed from the Court by the workman and the Court lacked jurisdiction to entertain the dispute. Broadly, it was pleaded that the services of the workman were of contractual nature and for his removal, a proper procedure had been adopted.

After filing of the replication by the workman, learned

Tribunal framed following six issues, vide order dated 03.08.2010:

- “1. Whether the services of workman, were terminated illegally by the respondents?OPW*
- 2. Whether the reference is not maintainable?OPM*
- 3. Whether this Court has got no jurisdiction to entertain and try this reference?OPM*
- 4. Whether the reference time barred?OPM*
- 5. Whether the dispute between the parties is not covered under the definition of Industrial Dispute Act, 1947?OPM*
- 6. Relief”*

6. At the stage of the evidence of the workman, Management did not appear before the Labour Court and therefore, it was proceeded against ex-parte vide order dated 19.07.2011. On moving an application dated 13.09.2011 by the Management, the said ex-parte order was set aside by recording the no objection of AR of the workman.

Again on 23.10.2012, respondents failed to appear in the Court and thus, Management was again proceeded against ex-parte resulting into the passing of the ex-parte award dated 01.04.2014 in favour of the workman.

Again an application for setting aside of the ex-parte award, was moved, which was allowed on 21.12.2015, subject to the payment of costs of Rs.3,000/- and thus, the reference was restored. Instead of receiving the cost amount, workman filed a writ petition bearing CWP-1404 of 2016, which was decided vide order dated 02.02.2016. Ultimately, issue reached before the Division Bench of this

Court (Punjab and Haryana High Court) in LPA No.691 of 2016 and vide order dated 05.04.2016, Hon'ble Division Bench Observed as under:

“We thus allow this appeal in part and modify the order dated 22.01.2016 passed by learned Single Judge as well as the Labour Court-cum-Industrial Tribunal dated 21.12.2015 and direct respondent No.2 to 4 to pay the cost of Rs.20,000/- to the appellant within one month from the date of receipt of copy of this order. The Labour Court-cum-Industrial Tribunal is directed to accord only limited opportunities, i.e. not more than two or three, to respondent Nos.2 to 4 to lead their evidence”

7. After receiving the cost amount as imposed by the Division Bench of this Court (Punjab and Haryana High Court), the process of recording of evidence started and after leading of evidence by both the sides, learned Tribunal decided issue Nos.1 to 5 collectively.

8. While stepping into the witness box as WW1, workman proved his pleadings and also proved the nature of work that he was doing with the Mangement i.e. making entries of the land record of District, Ropar and to sell that record (Jamabandis) to the land owners on cash payment (fee). Workman also deposed that he completed 240 working days of service in preceding one year from the date of termination.

9. On the other hand, Management produced Major Gurjinder Singh Benipal (MW1), who tendered his affidavit Ex.M1 stating therein that the services of the workman were of contractual nature and thus,

same being hit by Section 2 (oo) (bb) of the Act of 1947, workman is not entitled for any relief or regularization.

The Contract offer regarding Data Entry Operator dated 02.01.1992 and terms and conditions No.3 to 8 recorded in Ex.R1 are necessary to be detailed hereunder:

“3. That you will be given Rs.2.50/- per Khewat

4. That this is purely a contract job.

5. that after reviewing the performance in first two months, the contract can further be extended at the discretion of the undersigned.

6. That you have to maintain strict discipline in the computer centre and any act of indiscipline will result in termination of contract. Absence from duty without prior sanction will result in cancellation of contract and you will be liable to pay Rs.500/- as damages to the undersigned.

7. That the commencement of contract is from 11-11-1991.

8. The offer does not vest any right on part of operator to claim any preferential right for further absorption.”

10. From the material available on record, learned Labour Court made its observation that from the cross-examination of MW1 and document Ex.R1 i.e. contract offer issued by Additional Deputy Commissioner, Ropar, it is clear that the contract commenced from 11.11.1991. From the deposition of the said witness, it also comes out that workman worked on contract from 02.01.1992 to 30.06.1995 and the said period was extended from time to time. Thus, learned Tribunal concluded that workman had completed more than 240 days of service in

preceding one year from the date of his termination. Attendance of the workman was also proved from the affidavit Ex. W38. Qualifying of the type test and undergoing of the “***Nehru Rojgar Yojna Computer Training***” by the workman and his co-workers is also well proved from the documents available on record as Ex.W1 to Ex. W37.

11. Management could not dispute the correctness of the documents. Not only this, Labour Court also considered the letter (Ex. W29), wherein it is mentioned that work of computerization of land record was still incomplete because of lack of staff. Even, there was a letter (Ex.W36) available on record , which shows that there is dire need of creation of post of Data Entry Operator.

By considering several other circumstances, Labour Court ultimately reached to the conclusion that the workman falls within the definition of Section 2 (s) of the Act of 1947 and for the said purpose it relied upon “***Devinder Singh Vs. Municipal Council, Sanaur, 2011 AIR (SCW) 3455***” . Relvant paragraph Nos.25 and 27 of the said judgment are reproduced herebelow:

“25. In furtherance of the aforesaid resolution, the respondent engaged the appellant, who was already in its employment, as a Clerk for a period of six months on contract basis on consolidated salary of Rs. 1,000/- per month At the end of six months, the respondent passed another resolution dated 30.11.1995 and again employed the appellant for a period of six months from 1.11.1995 to 20.4.1996. This exercise was repeated in 1996 and the

appellant's term was extended for six months from 1.5.1996. However, his engagement was discontinued w.e. 30.9.1996 without giving any notice or pay in lieu thereof and compensation as per the requirement of clauses (a) and (b) of Section 25- F of the Act. It is true that the engagement of the appellant was not preceded by an advertisement and consideration of the competing claims of other eligible persons but that exercise could not be undertaken by the respondent because of the ban imposed by the State Government. It is surprising that the Division Bench of the High Court did not notice this important facet of the employment of the appellant and decided the writ petition by assuming that his appointment/engagement was contrary to the recruitment rules and Articles 14 and 16 of the Constitution. We may also add that failure of the Director, Local Self Government, Punjab to convey his approval to the resolution of the respondent could not be made a ground for bringing an end to the engagement of the appellant and that too without complying with the mandate of Section 25-F (a) and (b).

It has been further held as under :

"27. The plea of the respondent that the action taken by it is covered by Section 2(00) (bb) was clearly misconceived and was rightly not entertained by the Labour Court because no material was produced by the respondent to show that the engagement of the appellant was discontinued by relying upon the terms and conditions of the employment".

12. Thus, by considering the facts in totality regarding the completion of 240 working days by the workman in the preceding one year till the date of termination; contract was extended from time to time and work of computerization is still existing and not complete, this Court is in definite agreement with the findings recorded by learned Labour Court and in such a situation, Section 2 (oo) (bb) of the Act of 1947

would not be applicable.

13. At this stage, learned counsel for the Management submits that the Industrial Dispute is liable to be answered against the workman also on the doctrine of delay and laches because, with termination of the workman, cause of action, if any, had accrued to them in the year 1995 itself. However, all the seven references were referred for adjudication in the year 2008. Thus, there has been an unreasonable delay of over 14 years in referring the dispute.

14. On this aspect, this Court finds that already learned Labour Court was already conscious of the situation and therefore, has not granted any monetary benefits towards back wages. In other words, there is elaborative reason in the award for reinstatement of the workman in service by granting notional benefit of continuity of service but no back wages have been awarded. Therefore, while deciding the reference, learned Labour Court has already maintained the balance by weighing the scale of justice.

15. After going through the complete set of pleadings and the reasons assigned in the award by learned Labour Court and also after hearing the learned counsel for the parties, this Court is not inclined to cause any interference with the award passed by the Labour Court. Accordingly, all the 7 writ petitions filed by the Management and the 7

writ petitions filed by the workman(s) **are hereby dismissed.**

16. Pending miscellaneous applications, in any, in the
aforementioned 14 writ petition are **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

April 30, 2024
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Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No