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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. CWP-16633-2013 (O&M)
Decided on : 05.04.2024

Municipal Committee, Hodal
... Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal-cum-Labour Court-III,
Faridabad and another
... Respondent(s)

2. CWP-16893-2013 (O&M)

Municipal Committee, Hodal
... Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal-cum-Labour Court-III,
Faridabad and another
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Jagdish Manchanda, Advocate and
Mr. Ravi Gakhar, Advocate
for the petitioner(s) (in both cases).

Mr. R.S. Randhawa, Advocate
for respondent No.2 (in both cases).

SANJAY VASHISTH, J. (Oral)

1. This order shall dispose of aforementioned two writ petitions
i.e. CWP-16633-2013 (O&M), filed by the workman, and CWP-16893-2013
(O&M) filed by the Management, as the controversy involved in both the
aforementioned writ petitions is one and same.

However, for the purpose of disposal of these writ petitions,
main/common order is being passed in CWP-16633-2013 (O&M).

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2. Petitioner – Municipal Committee, Hodal, District Faridabad (being Management) has filed both the writ petitions against the workmen i.e. respondents No.2 – Zile Singh (in CWP-16633-2013) and Chander Vir (in CWP-16893-2013), challenging the award dated 28.03.2012 (Annexure P-4 in both cases), passed by Industrial Tribunal-cum-Labour Court-III, Faridabad (in short, ‘learned Tribunal’), whereby Reference Nos.161 & 162 of 2008, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’), have been answered in favour of the workmen.

While dealing with the question of sustainability of termination of workmen – Zile Singh & Chander Vir, learned Tribunal has held that the termination of both the workmen is illegal, and thus, they are entitled for reinstatement in service, by observing that the workmen will be provided preference over the others as per Section 25-H of the ID Act, while hiring the drivers on contract basis till the permanent drivers are recruited as per rules. Besides, further observed that in case the workmen are retrenched in future, the benefits of Section 25-F of the ID Act, will be provided to them. Cost of Rs.10,000/- in both the awards has also been imposed.

3. Facts as pleaded in both the cases in demand notice and claim statement are as under:-

I. CWP-16633-2013:- In the case of Zile Singh (respondent No.2 in CWP-16633-2013), pleaded case of the workman is that on 02.08.2004, he was engaged as driver in the Fire Brigade Department, which comes under the Essential Services of the State. Last drawn salary was Rs.3,000/- p.m. and the appointment of the workman was effected after detailed interview, which was held on 22.07.2004 by the panel of High Authorities including City Magistrate Palwal, General manager,

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Haryana Roadways Ballabhgarh, Fire Station Officer Palwal and Secretary, Municipal Committee Hodal. For the said appointment, applications were invited through newspaper Advertisement dated 25.06.2004. Appointment was initially on the pattern of Haryana Roadways on contract basis and workman worked till 02.04.2007 regularly without any break. However, without following the mandatory provisions of the ID Act, he was abruptly removed from the service. Thus, through the demand notice, an industrial dispute was raised by the workman.

In the written statement, Management pleaded that the workman – Zile Singh was appointed only for 89 days as driver in the Fire Brigade, so he is not entitled for any service matter. There was break in the service after every 89 days, thus, cannot claim any benefit under the ID Act.

- II. CWP-16893-2013:- In the case of Chander Vir (respondent No.2 in CWP-16893-2013), pleaded case of the workman is that on 02.08.2004, he was engaged as driver in the Fire Brigade Department, which comes under the Essential Services of the State. Last drawn salary was Rs.3,000/- p.m. and the appointment of the workman was effected after detailed interview, which was held on 22.07.2004 by the panel of High Authorities including City Magistrate Palwal, General manager, Haryana Roadways Ballabhgarh, Fire Station Officer Palwal and Secretary, Municipal Committee Hodal. For the said appointment, applications were invited through newspaper Advertisement dated 25.06.2004. Appointment was initially on the pattern of Haryana Roadways on contract basis and workman worked till 02.04.2007 regularly without any break. However, without following the mandatory provisions of the ID Act, he was abruptly removed from the service. Thus,

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through the demand notice, an industrial dispute was raised by the workman.

In the written statement, Management pleaded that the workman – Chander Vir was appointed only for 89 days as driver in the Fire Brigade, so he is not entitled for any service matter. There was break in the service after every 89 days, thus, cannot claim any benefit under the ID Act.

4. This way, the nature of working period of appointment, and reason of removal is almost similar in both the cases, thus, finding is being recorded in the case of Zile Singh i.e. CWP-16633-2013, which would be applicable in the other connected case of Chander Vir i.e. CWP-16833-2013, also.

5. After inviting pleadings of both the sides, learned Tribunal framed the following three issues, which are as under:-

- “1. Whether the services of the workman were illegally terminated ? If so, what relief he is entitled to? OPW*
- 2. Whether the claimant has no locus standi to file the claim statement? OPR*
- 3. Relief.”*

6. Learned Tribunal recorded its finding that the working period of the workmen in both the cases is not under dispute. It is not the stand of the Management that they have appointed regular driver on permanent basis in place of the workmen, rather, one Management witness i.e. Rakhpal (MW-1), appeared and admitted in his cross-examination that after the termination of workmen, two other persons were employed on contract basis. Thus, workmen – Zile Singh and Chander Vir, who were employed on temporary basis, were replaced by other employees, whose services too were hired on

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contractual basis. Learned Tribunal held that it is a violation of Section 25-H of the ID Act.

7. Learned counsel for the petitioner(s) – Management, relied upon the judgment appended with the writ petition as Annexure P-15 i.e. **Municipal Council, Samrala vs. Raj Kumar, 2006(3) SCC 81 : Law Finder Doc Id # 191359**) and submits that in the instant case, the workman, who was appointed as ‘clerk’ on contractual basis, his termination was held to be good.

However, facts in the present case are quite different to the case referred by learned counsel for the petitioner(s) – Management, because in that case Hon’ble Apex Court, dealt with a situation where the workman was employed as ‘clerk’ on contract basis, because in the Octroi Branch, one post was vacant and two employees were already on leave.

In the case in hand, though initially, appointments were made for 89 days. But for months and years together, said appointments were continued by the Management. As already observed and deposed by the Management witness itself that, no regular appointment was made, rather, service has been replaced with other contractual employees, after removal of the workmen in the present cases. Thus, there is a clear distinction between the facts and circumstances of both the cases. Thus, provision of Section 2(oo)(bb) of the ID Act, cannot be applied in the present cases.

8. Rather, in the facts and circumstances of the present case and taking note of the defense taken by the Management, the observation made by the Hon’ble Division Bench of this Court in **Chairman, The Mewat**

Development Agency, Nuh vs. Ravinder Balwan and another: 2012(2) RSJ

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428 : Law Finder Doc Id # 359423, para Nos. 2 & 3 would be material, which are reproduced as under:-

“2. We are afraid the Labour Court did not appear to be acquainted with the rudimentary principles of labour law inasmuch as it should have known that appointments for 89 days at a time are intended only to defeat the provisions of the Employment Exchanges (Compulsory Notification of Vacancies, Act 1959(Ref. Section 3 thereof) and such successive appointments would ordinarily amount to an Unfair labour practice. The issue of appointment for 89 days on consolidated salary was not germane in the context of compliance of mandatory provisions of Section 25F of the Act regarding prior notice and payment of retrenchment compensation. In the present case they had to be complied with. The philosophy behind payment of retrenchment compensation is to protect a workman against sudden dislocation and to put some money in his pocket to tide over immediate hardship and save him till he finds another job to sustain himself and his family.

3. We are also rather unhappy over the finding of the Labour Court that subsistence of the post of peon after retrenchment was crucial to the issue and that there was nothing wrong in bringing the services of the first respondent to an end abruptly for want of vacancy. The Labour Court also does not appear to be acquainted with the object and reasons for introducing Section 2(oo)(bb) in 1984 by amendment. Section 2(oo)(bb) ordinarily was intended for such engagements that are under special contract, express or implied which come to an end by efflux of time, or fixed tenure under contract for a specified purpose which by nature is limited by time. We may give an example so that the Labour Court would construct a word picture in mind to help it decide cases in future. Suppose a Chef has been engaged by a Hotel to train cooks for a specified period, say one year and the training is complete. The Cooks are trained. The contract is over. The Chef must exit out and such automatic disengagement would not have any reference to prior notice or payment of retrenchment compensation u/s 25F of the Act. This is only by way of illustration open to be multiplied in myriad and different fact situations presented in each case. No hard and fast rules can be laid down.”

In clear terms, the practice of appointing the workman for 89 days and then to give a formal gap has been deprecated. Said view is also tested and decided by the another Hon’ble Division Bench of this Court i.e.

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Director, Health & Family Welfare, Punjab, Chd. and others vs. Baljinder

Singh and another, 2006(1) PLR 506 : Law Finder Doc Id # 119647, on

the status of completion of 240 working days in one calendar year, position

of law regarding compliance of Section 25-F of the ID Act, has been held to

be mandatory. Relevant, para No.4 is reproduced as under:-

“4. It is not a matter of dispute that the respondent-workman actually and factually rendered service in excess of 240 days in the 12 calendar months preceding the date of his retrenchment. It is also not a matter of dispute, that at the time of his retrenchment, he was neither issued the mandatory notice envisaged under Section 25F of the Act, nor paid compensation in lieu thereof, and further, he was not paid any retrenchment compensation in terms of the mandate of Section 25F of the Act. It is, therefore, apparent that the termination of the service of the respondent-workman was in clear violation of the mandatory provisions of the Act.”

9. Not only this, this Court has also carefully examined the initial appointment letter of the workmen. Workman – Zile Singh was appointed in ESM category, by saying that ***candidates are hereby appointed at the post of Driver accordingly, fixed norm on contract basis, as per the pattern adopted by the Transport Department, Haryana, against the five posts of Drivers (three in Municipal Committee, Hodal and two in Municipal Council, Palwal respectively) to strengthen the Fire Lender Services in these municipalities.***

Subsequent thereto, by issuing the short orders, the services of the workmen were continued. From the initial issued appointment letter, two aspects emerge that the pattern adopted is equal to the Transport Department in the State i.e. Haryana State and the purpose is to strengthen the functioning of the fire lender services of the Municipal Committee, Hodal and Municipal Council, Palwal, respectively.

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Thus, contention of the Management that the appointment is only for 89 days is diametrically opposite to the purpose of strengthening the Fire Department. Even before this Court, petitioner – Management could not establish its stand that at first instance by appointing the drivers with a specific and strong purpose to strengthen the fire lender services **subsequently, by limiting the appointment period of 89 days, how the said purpose would be achieved. Thus, the manner of limiting the services of the workmen for 89 days by issuing different appointment letters is obviously, not justified under the law. Rather, it amounts to unfair labour practice.**

Admittedly, there is no allegation of any kind, against any of the workman, such as; incompetency, lack of driving skill or any kind of fault in the conduct. Thus, for the aforesaid reason also, judgment relied upon, by the petitioner – Management i.e. **Municipal Council, Samrala's case** (*supra*) would not be applicable for the purpose of decision of the present writ petitions.

10. Needless to say that already there is finding given by learned Tribunal that on the basis of statement of the Management's witness – Rakhpal (MW-1) there is a clear observation that after terminating the workmen in the present cases, other drivers were recruited on contract basis, thus, which amounts the violation of provisions of Section 25-H of the ID Act.

11. During the course of hearing, counsel representing respondent No.2 – workmen, produced a photocopy of the letter No.FA/2003/44242-59, dated 05.08.2003, issued from the office of the Director, Urban Estate, Haryana, Chandigarh, to all the Deputy Commissioner of the State, whereby,

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a conscious decision was taken to engage 117 drivers on the pattern adopted by the Transport Department, Haryana. In the said letter, nowhere State of Haryana directed to appoint the drivers only for 89 days.

Photocopy of the said letter is taken on the record of the writ petition.

12. Thus, after examining the pleadings and hearing of the submissions addressed by both the sides, this Court is on the firm view that there is no error in the impugned award passed in both the writ petitions and thus, same are worth to be maintained, without causing any interference therein. Accordingly, both the writ petitions are hereby **dismissed**.

Misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

April 05, 2024
J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~