

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-6602-2013 (O&M)
Date of Decision: 4th January, 2024

Haryana State Electronics Development Corporation Limited

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh
and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Pankaj Gupta, Advocate and
Mr. Vaibhav Gupta, Advocate for the petitioner.

Mr. Bhupinder Singh Bairagi, Advocate for respondent No.2.

HARSH BUNGER J.

1. Petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of impugned award dated 31.01.2012 (Annexure P-4) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute raised by respondent No.2-workman (Jagbir Singh) has been answered in his favour and he has been held entitled to reinstatement with continuity in service and 20% back wages.
2. Briefly, respondent No.2-workman (Jagbir Singh) raised an industrial dispute regarding termination of his services, which was subsequently referred to the Tribunal, for adjudication.
3. In the claim statement, it was the pleaded case of respondent

No.2-workman that he was appointed as Peon by the Haryana State Electronics Development Corporation Limited (hereinafter to be referred as 'the Management') on contract basis from 02.12.1998, which was extended from time to time. It was claimed by respondent No.2-workman that he was appointed on a sanctioned post and he served the Corporation to the best of his ability. It was further claimed that he was being paid salary as a regular employee and Corporation was deducting Contributory Provident Fund (C.P.F.), family pension, Employees' State Insurance (E.S.I.) and income tax at source from his salary. It was the categoric case of respondent No.2-workman that his services were engaged on contract basis, however later on, he had been working as a regular employee of the Corporation as no contract was executed in the last year of his employment, although a few blank proforma agreements were got signed from him. Respondent No.2-workman stated that a complaint, regarding the deduction of Provident Fund from the salary of respondent No.2-workman by the Corporation, was submitted to the Assistant Provident Fund Commissioner, who undertook the investigation and passed order dated 17.05.2002, which infuriated the authorities, and thereafter, they invited a tender for hiring the services of a contractor to get the work done, which was earlier being performed by respondent No.2 and other employees. It was stated by respondent No.2 that one M/s Aman Securities and Detective (Regd.) was allotted the contract of providing employees on contract basis; and after engaging the services of contractor, respondent No.2-workman was abruptly removed from service on 12.11.2002 without giving any show cause notice or holding any inquiry or paying any retrenchment compensation. Accordingly, prayer for reinstatement in service along with all the consequential benefits was made by respondent No.2-workman.

4. The aforesaid claim of respondent No.2-workman was contested by the petitioner-Management by submitting its reply, wherein it was *inter alia* stated that respondent No.2 was engaged on purely contract basis vide agreement dated 20.10.1999 and his engagement was for the fixed period. It was stated that as per the terms of Agreement, it was clear between the parties that workman will not get any right for regular employment in the Corporation. It was stated that every time services of the respondent No.2 were engaged by the petitioner-Management, a new agreement was executed. It was denied that respondent No.2 was working as a regular employee or any deductions were being made from his salary. Accordingly, prayer for dismissal of the reference of respondent No.2 was made by the petitioner-Management.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

“(i) Whether the service of the workman were terminated illegally by the management, if so, to what effect and to what relief the workman is entitled to, if any? OPW

(ii) Whether the reference is not maintainable as alleged? OPM

(iii) Whether there is no cause of action in favour of the workman, as alleged? OPM

(iv) Whether there is no relationship of employee and employer between the parties, as alleged? OPM

(v) Relief”

6. Thereafter, respondent No.2-workman examined himself as AW-1. However, petitioner-Management failed to produce its witness for examination despite many opportunities and its evidence was closed by order.

7. The Tribunal vide its impugned award dated 31.01.2012 (Annexure P-4) allowed the reference in favour of respondent No.2-

workman and directed the petitioner-Management to reinstate him with continuity in service and 20% back wages.

8. Being aggrieved against the aforesaid award dated 31.01.2012 (Annexure P-4), petitioner filed the instant writ petition before this Court.

9. Learned counsel for the petitioner submits that the Tribunal has erred in law and fact in deciding the reference in favour of respondent No.2-workman. It is submitted that Tribunal has failed to consider and appreciate the fact that case of respondent No.2-workman fell within the provisions of Section 2(o)(bb) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'). It is further submitted that even otherwise, findings returned by the Tribunal regarding continuous service rendered by respondent No.2 in terms of Section 25-B of the 1947 Act is contrary to the express provisions contained in Section 25-B *ibid* and also the law on the issue. Accordingly, it is stated by learned counsel for the petitioner that impugned award dated 31.01.2012 (Annexure P-4) is unsustainable in the eyes of law.

With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside impugned award dated 31.01.2012 (Annexure P-4).

10. On the other hand, learned counsel for respondent No.2-workman has opposed the prayer made on behalf of the petitioner-Management by submitting that Tribunal has passed a well reasoned and justified award, which does not call for any interference by this Court; and prayer has been made for dismissal of the instant writ petition.

11. I have heard learned counsel for the parties and perused the paper book with their able assistance.

12. In the instant case, it is respondent No.2-workman's own

pleaded case that he was appointed on contractual basis, and subsequently, the Department had invited tenders for outsourcing the work through contractors, whereupon services of respondent No.2-workman were terminated. A perusal of impugned award dated 31.01.2012 (Annexure P-4) would show that although Tribunal has noticed the submission made on behalf of the petitioner-Management that termination of respondent No.2-workman's services did not amount to retrenchment as it was a case of non-renewal of contract under Section 2(oo)(bb) of the 1947 Act, however, it is apparent that no finding has been returned on the said submission. Furthermore, while considering the case of respondent No.2-workman, Tribunal has returned the following findings as regards the continuous service in terms of Section 25-B of the 1947 Act:-

“10. Evidence led by the workman has remained unrebutted. Workman has established, vide his affidavit Exhibit 'WA' that he was initially engaged as Peon on contract basis with effect from 2nd December, 1998 for three months. The management has failed to rebut evidence of the workman that his services remained continuous thereafter. In the written statement, the management has referred to period of employment of the workman with effect from 20th October, 1999, vide above discussed agreement. Before agreement dated 20th October, 1999, the workman had completed ten months and twenty days approximately under Section 25-B of the ID Act. The workman after having rendered service or more than 240 days in that calendar year was in continuous service of the management for a period of one year. Thereafter the work remained available with the management and even if the workman was engaged through specific agreement or through any contractor, services of the workman were not liable to be terminated without notice/retrenchment compensation or any disciplinary action as per provisions of the ID Act. Getting specific agreement signed from the workman who was already

in employment for more than one year under the law does not adversely affect the legal rights of the workman envisaged under the ID Act protecting continuation of his service.

11. In the light of discussion made above, I reach at conclusion there was relationship of employer and workman between the parties and the workman was not debarred from moving demand notice for desired relief as per arbitration clause asserted by the management in agreement dated 20th October, 1999. Reference duly made by competent authority is liable to be answered on merits. The management has violated the provisions of Section 25-F by terminating the services of the workman with effect from 12th November, 2002. The workman is entitled to his reinstatement. Regarding claim of back wages the workman has not deposed, vide his affidavit that he was not gainfully employed at any place after his retrenchment. Being just and proper the workman is allowed twenty per cent back wages for the period he has remained out of job after termination of his services. All these issues are decided accordingly in favour of the workman.”

A perusal of the above extracted findings would clearly indicate that the Tribunal has totally misdirected itself in holding that respondent No.2-workman had rendered continuous service in terms of Section 25-B of the 1947 Act and a wholly wrong finding has been returned. It is apposite to state here that as per the pleaded case of respondent No.2-workman, his services were terminated on 12.11.2002, and therefore, the relevant period for considering the continuous service rendered by him in terms of Section 25-B *ibid* would be from 12.11.2001 to 12.11.2002, i.e. preceding twelve calendar months from the date when services of respondent No.2 were terminated, whereas in the instant case, Tribunal has returned the findings that before the agreement dated 20.10.1999, respondent No.2-workman had completed ten months and twenty days approximately under Section 25-B of the 1947 Act, and accordingly, it was observed that respondent No.2-

workman, after having rendered more than 240 days in that calendar year, was in continuous service of petitioner-Management. The aforesaid finding of Tribunal is totally erroneous and contrary to the express provisions of law as contained in Section 25-B *ibid* and the same cannot be sustained.

13. Considering the totality of facts and circumstances of the instant case, I am of the view that since the objection raised by petitioner-Management that case of respondent No.2-workman was covered under Section 2(o)(bb) of the 1947 Act, has not been considered by the Tribunal nor the finding on the issue of continuous service in terms of Section 25-B of the 1947 Act has been rendered in accordance with law, therefore, impugned award dated 31.01.2012 (Annexure P-4) is unsustainable in the eyes of law, and accordingly, the same is set aside.

Since material issues have not been considered and decided by the Tribunal in accordance with law, I deem it appropriate to remand the matter to the Tribunal for fresh decision in accordance with law, within a period of one year from the date when the parties appear before it.

The parties are directed to appear before the Tribunal below on or before 12.02.2024.

14. The present writ petition is partly allowed in the aforesaid terms.

15. All pending application(s), if any, shall also stand closed.

4th January, 2024
Apurva

(HARSH BUNGER)
JUDGE

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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |