



108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 32594 of 2024
Date of Decision: 03.12.2024

Pushpa

....Petitioner

VS.

Presiding Officer Industrial Tribunal and Labour Court, UT
Chandigarh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Shivroop Singh Dhaliwal, Advocate
for the petitioner

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226 & 227 of the Constitution of India is seeking setting aside of award dated 22.04.2024 (Annexure P-1) whereby Labour Court has answered the reference against her.

2. The petitioner claims that she joined respondent-Director, Treasury & Accounts Haryana, Sector-17, Chandigarh in December'2015 and was retrenched on 13.01.2020. The respondent is claiming that she had worked till 30.11.2019. The petitioner assailing her termination preferred an application under Section 2A(2) of the Industrial Disputes Act, 1947 (in short "1947 Act") before Labour Court. The Labour Court vide impugned



order has answered the reference against her. It has held that petitioner falls within definition of 'Workman' and she has completed 240 days preceding the date of her retrenchment. The respondent falls within definition of 'Industry', thus, 1947 Act is applicable. The Labour Court has further held that petitioner falls within the ambit of Section 2(oo)(bb) of 1947 Act, thus, she is not entitled to benefit of Section 25F of 1947 Act.

3. Mr. Shivroop Singh Dhaliwal, Advocate submits that petitioner worked with respondent for almost five years. She was retrenched without complying with Section 25F of 1947 Act. The findings recorded by Labour Court are perverse and deserve to be set aside.

4. The labour Court has found that respondent falls within definition of 'Industry' and petitioner falls within definition of 'Workman' as contemplated by 1947 Act, however, answered the reference against the workman on the ground that she falls within the ambit of Section 2(oo)(bb) of 1947 Act. The relevant extracts of the impugned order are reproduced as below:-

21. MWI in her cross-examination stated that she on behalf of the department is not ready to take back workman on duty as the department has already engaged regular employees. To substantiate the above-referred version of MWI Learned ADA for the management referred order Exhibit 'M7' dated 31.01.2019 and order Exhibit 'M8' dated 09.03.2019 and argued that vide order Exhibit 'M7' on the recommendation of Haryana Staff Selection Commission vide letter No. HSSC/Confid/Recomm/2019/1147 dated 21.10.2019, four candidates were offered temporary appointment of Peon on regular basis in the office of Director General



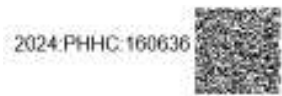
Treasury & Accounts, Department of Haryana, Chandigarh (Head Quarter) in level DL of the Pay Matrix level as specified in Haryana Civil Services (Revised Pay) Rules, 2016. Vide order Exhibit 'M8' on the recommendation of Haryana Staff Selection Commission vide letter No.HSSC/Confid/Recomm/2019/1147 dated 21.01.2019, one candidate was offered temporary appointment of Peon on regular basis in the office of Director General Treasury & Accounts, Department of Haryana, Chandigarh (Head Quarter) in level DL of the Pay Matrix level as specified in Haryana Civil Services (Revised Pay) Rules, 2016. Learned ADA for the management contended that in view of appointments made by virtue of Exhibit 'M7' & Exhibit 'M8', there was no requirement of grant of extension to the part time post of Peon on which the workman was employed and therefore, sanction is rightly not granted beyond 30.10.2019. On the other hand, it is contended by Learned Representative for the workman that since the workman has completed more than 240 days of continuous service in 12 calendar months preceding termination of her services, thus the workman fulfils the requirement of Section 25B of the ID Act and cannot be removed from service without compliance of Section 25F of the ID Act. It is further contended by Learned Representative for the workman that the management-department has neither issued any notice nor held any inquiry before termination of her services. To support his contention Learned Representative for the workman has referred cross-examination of MWI wherein she stated that no charge sheet was issued and no inquiry was conducted against the workman. MWI voluntarily stated that the workman was not regular employee, therefore, no requirement to issue any charge sheet or to hold any



inquiry. To my opinion, the requirement to issue charge sheet or to hold inquiry arises when there is any allegation of misconduct against the workman. In the present case, there is no allegation of misconduct against the workman. The plea of the management is that the five regular employees were recruited after the selection process vide Exhibit 'M7' & Exhibit 'M8' and sanction to the post of Peon held by the workman was not granted beyond 30.11.2019, therefore, there is no violation of any provision of the ID Act. In order Exhibit 'M2' passed on 01.10.2019 it was clearly mentioned that no extension will be allowed after 30.11.2019. The knowledge of Exhibit 'M2' is not disputed by the workman. Dispensing with services of the workman by the management due to non-extension of sanction beyond 30.11.2019 accompanied with the fact that five regular employees were employed, the action of the management dispensing with the services of the workman on 30.11.2019 falls within the ambit of Section 2(oo)(bb) of the ID Act and therefore, Section 25F of the ID Act is not attracted. Hence, it is not a case of illegal retrenchment or termination.

22. Accordingly, this issue is decided against the workman and in favour of the management.”

5. From the perusal of above quoted findings, it is evident that petitioner was not a regular employee and respondent is an instrumentality of State Government. The respondent made regular appointment of five Peons, thus, petitioner who was temporary employee was bound to be retrenched. There is no jurisdictional error or factual infirmity in the impugned order warranting interference.



6. In view of the above, instant petition deserves to be dismissed and accordingly hereby dismissed.

(JAGMOHAN BANSAL)
JUDGE

03.12.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	