

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

214-2

Decided on :26.03.2025

CWP-13784-1999 (O&M)

MANAGING DIRECTOR HARYANA SEEDS DEVELOPMENT
CORPORATION LTD. . .Petitioner

vs

PRESIDING OFFICER, LABOUR COURT-CUM-INDUSTRIAL
TRIBUNAL, ROHTAK ETC

. . . Respondents

CWP-832-2000 (O&M)

NARESH KUMAR . .Petitioner

vs

PRESIDING OFFICER, LABOUR COURT-CUM-INDUSTRIAL
TRIBUNAL, ROHTAK & ANR

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

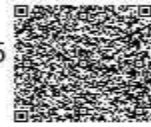
PRESENT: Mr. Rajesh Gaur, Advocate
for the petitioner in CWP-13784-1999
for the respondent No. 2 in CWP No. 832 of 2000 .

Mr. Samrat Malik, Advocate
respondent No. 2 for respondent in CWP-13784-1999 and
for the petitioner in CWP-832-2000.

HARSIMRAN SINGH SETHI, J. (Oral)

1. By this common order, a set of writ petitions, the details of which have been given in the heading, are being disposed of as both the petitions involve the same question of law on similar facts.

2. In the present petitions, the challenge is to the impugned award dated 26.03.1999 (Annexure P-10). Challenge to the Award at the hands of the employer is that same has been passed without appreciating the provisions of Section 2 (oo) (bb), of the Industrial Disputes Act, 1947 (herein after referred to as 'The 1947 Act'), the benefit of reinstatement on previous post with continuity of service & 50 % back wages had been



CWP-13784-1999 (O&M)
CWP-832-2000 (O&M)

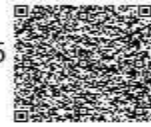
-2-

granted to the respondents-workman, whereas the respondents-workman has approached this Court challenging the said award that he has not been granted the benefit of full back-wages for which he is entitled for.

3. Certain facts have gone undisputed such as that the respondents-workman was appointed on contractual basis for a period of 89 days on 08.04.1994. The said contractual appointment of the respondent-workman was being extended from time and again and the last extension was upto 25.05.1996, after which, extension in service was not extended. By treating that the service of the respondent-workman was terminated, the respondent-workman approached the labour Court with the plea that he had worked for more than 240 days in a calendar year from to the termination of his services and Section 25 (F) of 1947 Act has not been complied with therefore, the termination of the services of the workman is bad.

4. The labour Court, accepted the plea of the workman that the workman had completed 240 days in a year prior to the date of his termination and Section 25 (F) of the 1947 Act has not complied with hence, the termination of services of workman were bad and the granted him the benefit of reinstatement with continuity in service and 50% back-wages. The workman as well as the employer are before this Court as they are not satisfied with the award dated 26.03.1999 (Annexure P-10) passed by the labour Court, hence, the present petitions have been filed by them.

5. Learned counsel for the workman submits that once the termination order terminating the services of the workman was found to be bad, the workman was entitled for the full back-wages and therefore, the impugned award dated 26.03.1999 (Annexure P-10) needs to be modified that rather than the benefit of 50 % back-wages, the workman was entitled



CWP-13784-1999 (O&M)
CWP-832-2000 (O&M)

-3-

for the benefit of full back-wages.

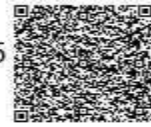
6. Learned counsel for the employee submits that in the present case the labour Court has misdirected itself and has not considered the provision of 2 (oo) (bb) of the 1947 Act in the correct perspective as the workman was appointed for a particular period and was being given extension in service and his services came to an end upon expiry of the last extension whereas the same has been treated as termination, but under the 1947 Act, the same cannot be treated as retrenchment so as to grant the benefit of Section 25 F of the 1947 Act.

7. Learned counsel for the employee further submits that where the work of the post exists even if the contract has come to an end the termination of services will be treated as retrenchment.

8. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

9. First, the writ petition being filed by the employer is being decided as in case the employer is succeeded, the writ petition filed by the workman will be rendered infructuous.

10. It is a conceded fact that which has been recorded by the Labour Court that the appointment of the workman was initially for a period of 89 days with the specific date of appointment and the specific date of said appointment came to an end. The said contractual appointment was being carried forward by giving extension to the workman by the employer with the clear indication that the extended appointment will also come to an end on a particular date. It is also a conceded position that the appointment of the workman has come to an end keeping in view the fact that no further extension in service was granted by the employer after 25.05.1996.



CWP-13784-1999 (O&M)
CWP-832-2000 (O&M)

-4-

11 The Section 2 (oo) defines the retrenchment and Section 2(oo) (bb) defines where the termination of the services of an employee will not amount to retrenchment.

12. For better understanding, the Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 is reproduced as under-

“2 (oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

[(bb) termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or]”

13. A bare perusal of the above provision would show that an appointment which is for a specific period, and has not been carry forwarded due to non extension of service contract, the same will not amount to retrenchment.

14. In the present case, it is a conceded position that the service of the workman came to an end due to non extension of the service contract of the workman. That being so, the said termination of the workman from the service will not be termed as a retrenchment.

15. Once, the termination of services of the workman will not amount to retrenchment, the question of complying of Section 25 (F) of the 1947 Act, which is only applicable in case the services of an employee has



CWP-13784-1999 (O&M)

CWP-832-2000 (O&M)

-5-

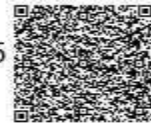
been retrenched, will not be attracted. The labour Court has misdirected itself merely on the ground that the work of the post existed with the employer but extension in service was not granted .

16. The labour Court cannot step into the shoes of the employer to decide as to whether the services of an employee is to be extended or not. It has to be the decision of the employer as to whether in particular facts and circumstances extension in service is to be granted to the employee or not. Labour Court substantiating its opinion with that of the employer is by exceeding jurisdiction which act of the labour Court cannot be accepted.

17. Keeping in view the said fact, the grant of benefit in favour of the workman cannot be accepted as the case of the petitioner is covered by the provisions of Section 2 (oo) (bb) of the 1947 Act.

18. Learned counsel for the workman has submitted that in paragraph 13 of the impugned award, the provisions of Section 2 (oo) (bb) has been discussed. Keeping in view the judgment of Hon'ble Supreme Court of India in **Bhikhu Ram v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak 1998 (1) RSJ 703**, the benefit has been granted to the workman. It may be noticed that a bare perusal of the reproduction of the judgment in **Bhikhu Ram's case(supra)** it has been held that where there is a bonafide non-extension of the contract, Section 2 (oo) (bb) will be attracted. In the present case, nothing evident has come on record that the services of the workman were terminated with mala fide intention so as to oust the workman from the service.

19. In the absence of any such material evidence brought on record, the argument of the workman that non-extension of the service contract was malafide, no relief can be granted.



CWP-13784-1999 (O&M)
CWP-832-2000 (O&M)

-6-

20. Keeping in view the totality of facts and circumstances of the present case, the impugned award dated 26.03.1999 (Annexure P-10) passed by the Labour Court cannot be upheld as the same is perverse to the provisions of the 1947 Act and is also perverse to the facts which have brought on record and accordingly, the same is set-aside.

21. As the operation of the impugned Award dated 26.03.1999 (Annexure P-10) was stayed by the Co-ordinate Bench of this Court while issuing the order of notice of motion, but employees is getting the wages under Section 17 (B) of the 1947 Act, any wages which the employees has got so far will not be recovered by the employer and the same will be retained by the workman themselves.

22. The present petition i.e. CWP-13784-1999 is allowed in above terms and CWP- 832-2000 is dismissed in view of the order passed in CWP-13984-1999.

23. Pending civil miscellaneous application, if any, stands disposed of.

24. A photocopy of this order be placed on the file of connected case.

(HARSIMRAN SINGH SETHI)
JUDGE

26.03.2025

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Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*