



CWP-21426-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-21426-2019 (O&M)
Date of Decision :05.05.2025Head Master Govt. High School Mirzapur
(Hoshiarpur) and another

...Petitioner

Versus

Rajinder Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Akshita Chauhan, DAG, Punjab
for the petitioner-State.

Mr. Ram Kumar Chauhan, Advocate for respondent No.1.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to the award dated 08.03.2018 (Annexure P/1) passed by Presiding Officer, Industrial Tribunal, Jalandhar by which, the termination of the services of the respondent No.1-workman at the hands of petitioner-school has been held to be bad by the Labour Court and a direction has been issued to petitioner to reinstate the respondent No.1-workman in service with continuity along with full back wages by treating the wages @ Rs.800/- per month.

2. Learned counsel appearing for the petitioner-State submits that there existed no master and servant relationship between the petitioner-school and the respondent No.1-workman as the respondent No.1-workman was appointed as Peon-cum-Chowkidar by the Parents Teacher Association and was paid her salary out of the funds collected by the said association

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and no appointment order was ever issued by the petitioner-School in favour of respondent No.1-workman and no salary was paid to the respondent No.1-workman out of the Government funds, which facts have totally been ignored by the Labour Court while passing the impugned award.

3. Learned counsel for the petitioner-State further submits that the impugned award has been passed by Labour Court in favour of the respondent No.1-workman on the ground that she has worked for more than 240 days in the 12 months preceding the alleged date of termination and as benefit of retrenchment compensation as is envisaged under Section 25-F of the Industrial Dispute Act, 1947 (hereinafter referred to as 1947 Act') has not been paid to the respondent No.1-workman by petitioner-State, the said termination of service of the respondent No.1-workman is bad and therefore, the benefit of reinstatement in service along with full back wages has been granted to the respondent No.1-workman while totally ignoring the aspect that whether there existed master and servant relationship between the petitioner-school and respondent No.1-workman hence, the impugned award dated 08.03.2018 (Annexure P/1) may kindly be set aside.

4. Learned counsel for the respondent No.1-workman submits that though, there was no appointment order issued by the petitioner-school in favour of respondent No.1-workman but the respondent No.1-workman discharged the duties assigned to him in the school which is a Government school and therefore, discharging of the duties under the supervision of Head Master, who is appointed by the Government would mean that there exists a master and servant relationship between respondent No.1-workman and petitioner-school hence, the services of the respondent No.1-workman



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were terminated without following the provisions of Section 25-F of the 1947 Act hence, the benefit of reinstatement in service along with back wages has rightly been extended by the Labour Court to the respondent No.1-workman .

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. As per the settled principle of law settled by the Hon'ble Supreme Court of India in **SLP (Civil) No.19648-2023 titled as, The Joint Secretary, Central Board of Secondary Education and another vs Raj Kumar Mishra and others decided on 17.03.2025**, the factum of master and servant relationship has to be proved on the basis the documentary evidence. Relevant paragraphs of the said judgments are as under:-

“6. Having considered the facts and circumstances of the case(s) and submissions of learned counsel for the parties, we find 3 substance in the contentions of learned counsel for the appellants. The issue whether the private respondents were employees of the appellants, is the crux of the matter. Whatever material has been placed and even the best point which was argued by the learned Senior Counsel for the private respondents before this Court was that since there was supervisory and jurisdictional control over the private respondents by the appellants, ipso facto, they would become employees of the appellants is noted only to be rejected.

7. This is not only a very simplistic approach, but also a totally erroneous approach in law. For a person to claim employment under any organization, a direct master-servant relationship has to be established on paper. In the present case(s), admittedly, the only document, which the private respondents have in their favour, is showing that they were posted at various places doing different nature of work.

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8. This clearly in the considered opinion of the Court would not establish master-servant relationship.”

7. In the present case, concededly, no appointment order issued in favour of the respondent No.1-workman by the petitioner-school has been brought on record to show that respondent No.1-workman was appointed by the petitioner-school. Further, no salary slip issued by the petitioner-school in favour of the respondent No.1-workman has also been brought on record. Merely that the respondent No.1-workman was working under the supervision of the Head Master, who is appointed by Government, is no ground to assert that there existed master and servant relationship between respondent No.1-workman and petitioner-school so as to claim benefit, as the Hon'ble Supreme Court of India in **Raj Kumar Mishra (supra)** has held that mere supervisory control over the workman and working of the workman under the Principal employer will not create a master and servant relationship between both. The Labour Court has totally ignored the said aspect.

8. Further, it is not in dispute that respondent No.1-workman was appointed as Peon-cum-Chowkidar by Parents Teacher Association and was paid his salary out of the funds of the Parents Teacher Association. The said fact has also been ignored by the Labour Court while passing the impugned award that once the appointment of the workman as Peon-cum-Chowkidar is by the Parents Teacher Association and the payment was also being made to the workman by the said association, then how can there be a master and servant relationship between the petitioner-school and respondent No.1-workman. Merely that the respondent No.1-workman working in the school is not good enough to hold that there existed master and servant relationship



between respondent No.1-workman and petitioner-school.

9. Hence, it can be safely held that once, there exists no master and servant relationship between the petitioner-school and the respondent No.1-workman, giving benefit of reinstatement in service to the respondent No.1-workman with continuity and full back wages is perverse to the facts and evidence which have already come on record. The impugned award is also perverse to the settled principle of law noticed hereinbefore.

9. Learned counsel for the respondent No.1-workman further argues that once, the respondent No.1-workman worked for 240 days in the preceding year prior to the termination of service, Section 25-F of the 1947 Act is liable to be implemented and the respondent No.1-workman is entitled for benefits envisaged under 1947 Act.

10. It may be noticed that the respondent No.1-workman never agitated his claim qua termination against the Parents Teacher Association, which was the employer. The Parents Teacher Association was also not made a party before the Labour Court in the reference raised by respondent No.1-workman. In the absence of Parents Teacher Association being party, no relief can be given to the respondent No.1-workman.

11. Keeping in view the facts and circumstances recorded hereinbefore coupled with the settled principle of law cited hereinabove, impugned award dated 08.03.2018 (Annexure P/1) passed by the Presiding Officer, Industrial Tribunal, Jalandhar does not sustain in the eyes of law and is accordingly set aside.

12. It may be noticed that any financial benefit already given to the respondent No.1-workman under Section 17-B of the 1947 Act will not be



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recovered.

13. Present petition is allowed in above terms.

14. Civil miscellaneous application pending if any is also disposed of.

May 05, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No