

(2014) 01 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 6677 of 2010

Chief Executive Officer, Mewat Development Agency and
Another

APPELLANT

Vs

Presiding Officer, Industrial Tribunal-cum-Labour Court-1 and
Another

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : (2014) 1 LLJ 586

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : R.K. Malik, Sr. Advocate and Tej Pal Dhull, Advocate for the Appellant; Raj Mohan Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—Challenge in the present writ petition is to the award dated 07.12.2009 (Annexure P11) vide which the respondent No. 2-workman was reinstated with continuity in service and awarded 30% back wages. The claim before the Labour Court was that the petitioner had been appointed in the Mewat Model School, Tehsil Punhana, District Gurgaon on 20.08.2001 on the post of Driver and was drawing a salary of Rs. 2,735/- and his services were terminated on 21.11.2003 without payment of retrenchment compensation and other dues, in accordance with law. Accordingly, claim was made for reinstatement with full back wages and continuity of service on the ground that the service record of the workman was unblemished and neither any charge sheet was issued nor any domestic enquiry was conducted and no opportunity of hearing was given to the workman. It was pleaded that the issuance of appointment letter for 89 days, one after the other, was unfair labour practice on the part of the Management and there was no break in service.

2. In the written statement, filed by the petitioners-Management, it was Sailesh ranjan pleaded that the workman misbehaved with the students, their parents

and other staff members of co-educational school. He also indulged in having liquor during the duty period and there was a complaint by the students and parents and staff members. His services were not extended as the workman was indulging in wrongful acts and could not be rewarded for his wrong doings, particularly in a co-educational institution. Accordingly, it was submitted that the services of the workman were terminated without any extension of service, as per terms of the appointment letter, which was the basis of the service. Reliance was placed upon the appointment letter containing the terms and conditions which contained the stipulation that the contractual assignment could be terminated at any time, without giving prior notice. Due to the nature of his appointment, there was no issue of probe or regular enquiry and due to the allegations against him, such persons could not be allowed to remain in co-educational school any more. The complaints received against his work and conduct and his own admission were enclosed to justify the non-extension of his contract. It is further averred that there was no continuity in service and there were breaks in service after a spell of every 89 days and it was denied that it was an unfair labour practice.

3. The Labour Court, after taking into account the statements of the workman and the Management witness, Ms. Mercy Jitus and the documents of the Management, Exhibits M2 to M7, came to the conclusion that the workman had been appointed as Driver with the petitioners-Management w.e.f. 20.08.2001, 28.01.2002 and lastly, on 10.12.2003, on 89 days basis and there were notional breaks and therefore, he had acquired status of a regular employee. Reliance was placed upon two Division Bench judgments of this Court in the case of Bhikku Ram v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak 1998 (1) RSJ 703 and Director, Health and Family Welfare and Others Vs. Baljinder Singh and Another, and the judgment of Hon"ble Apex Court in The Chief Soil Conservator Punjab and Others Vs. Gurmail Singh, to hold that termination of the workman, working intermittently with the Management, would amount to illegal retrenchment. Accordingly, the benefit of reinstatement was given along with continuity of service and back wages to the extent of 30% on the basis of the last drawn salary vide the impugned award dated 07.12.2009.

4. Learned Senior Counsel for the petitioners vehemently contended that as per the last appointment letter dated 30.09.2003, issued to the respondents, which was placed before the Labour Court as Exhibit M2 and copy of which is attached as Annexure P4, the appointment of the respondent-workman was on 89 days from 25.08.2003 to 21.1.2003, on a consolidated fees of Rs. 2605/- per month. The contractual assignment could be terminated, at any time, without assigning any reason or without giving any prior notice. The said contract came to an end on 21.11.2003 and therefore, there was no valid termination and only the contract was not renewed. Reliance was placed upon the judgment of the Hon"ble Apex Court in State of Rajasthan and others Vs. Rameshwar Lal Gahlot, to take a plea that u/s 2(oo)(bb) of the Act, in the case of a contractual appointment, there was no termination. It was further contended that the

workman had admitted his misconduct during his period of contract and therefore, admittedly, due to his guilt of consumption of liquor etc., was not entitled for the benefit of reinstatement and his non-extension of the contract did not amount to unfair labour practice. Reliance has also been placed upon C.W.P. No. 8438 of 1996 titled Meena Rawat v. The Haryana Urban Development Authority and Another, decided on 18.05.2009 (P12) and upon a judgment of the Apex Court in Municipal Council, Samrala v. Raj Kumar (2006) 3 SCC 81 : LNIND 2006 SC 1202 : 2006-II-LLJ-553.

5. Counsel for respondent No. 2, on the other hand, submitted that the Sailesh ranjan workman continued in service and the posts were still there and buses were still running in the educational institute and it was a clear cut case of termination, without holding any enquiry, inspite of the fact that the workman was entitled to the protection of the Act, having completed 240 days and the action of the Management in granting repeated appointment letters amounted to unfair labour practice.

6. After hearing counsel for the parties, this Court is of the opinion that there is no merit in the present writ petition and the petitioner-school cannot hide behind the plea of contractual appointment; rather, if the veil is lifted in the present case, it would go on to show that the services of the workman had been terminated taking advantage of the terms of the appointment letter which reads as under:

Shri Kishan Kumar S/o. Sh. Sher Singh, R/o Vill. Hathin, District Faridabad is hereby engaged as a Driver at Mewat Model School, Punhana on contractual basis for a period of 89 days i.e. from 25.8.2003 to 21.11.2003 on the consolidated fee of Rs. 2605/- per month on the following terms and conditions:

1. No allowances are admissible.
2. No increment will be allowed to him.
3. He can not leave the headquarter without prior permission of the competent authority.
4. He will not claim any right to be regular or regular pay scale and he will file an affidavit to this effect.
5. His contractual assignment can be terminated at any time without assigning any reason or giving any prior notice.
6. He would furnish an affidavit on stamp paper worth Rs. 3/- duly attested by the first class Magistrate to the effect that he will be liable to pay any compensation on account of injuries and disabilities suffered to any person due to his rough and negligible driving or satisfy the claim of petitioner in the court of law from Insurance under the Vehicle Act.

Sd/- CEO, MDA-cum-Vice-Chairman Mewat Model School Society, Nuh Endst. No. MMSP/2003/2956-58 Dated: 30.9.2003

7. There is no denying the fact that the workman had been working continuously since 20.08.2001 on the post of Driver and it is not the case of the Management that there was any term in the appointment letter that on the work coming to an end, his services would be dispensed with. There is no dispute that the school continued to engage Drivers for running their buses and therefore, the petitioner-Management cannot take the plea that the contract had not been renewed on the basis of the work not continuing. Rather, in the present case, it is apparent from the depositions of the Management witness in which the plea taken was that there was some allegations of misconduct against the workman- respondent No. 2, qua an incident dated 15.11.2003, i.e., just before the time when his services were dispensed with on 21.11.2003. Reliance was also placed on para No. 5 of the statement of the Management witness, appended by the petitioners which reads as under:

5. That while on duty as driver on students Bus including girls on 15.11.03, he consumed liquor while coming back from Delhi along with other buses. Those buses had been taken on picnic excursion on that day. Children were dropped till 3.00 a.m. of 16.11.03. Staff was put on humiliation and embarrassment. An enquiry was initiated in which he admitted his mistake. Not only that he continued in indulging misconduct while coming duly drunk and threatening the staff members for worst consequences if any action was taken against him and as such his services were not extended further from 21.11.03 when his previous extension expired by the competent authority vide letter dated 10.12.03, copy Ex. M6. Copy of his explanation dated 18.11.03 is Ex. M7 and his letter dated 5.12.03 giving threats to the principal and other staff of the respondent Management.

8. A perusal of the averments would go on to show that instead of holding an enquiry, the Management chose to take the easy way out by dispensing with the services of the workman on the ground that his contract was only till 21.11.2003, as per the appointment letter dated 30.09.2003 (Annexure P4), as reproduced above. In fact, categorical finding has been recorded by the Labour Court that the practice of the Management in issuing repeated appointment letters of 89 days was to deny the workman the benefit of a regular employee and it was an effort to get out of the ambit of the Act.

9. The judgment of Apex Court in State of Rajasthan v. Rameshwar Lal Gahlot (supra) would be of no help since in that case, the workman was appointed on 28.01.1988 and his services were terminated on 19.11.1988. Writ petition came to be filed by the employee on the ground that the termination was violative of Section 25-F of the Act and a direction was issued to make a fresh appointment. In an appeal filed, the Division Bench had set aside the order directing fresh appointment and directed reinstatement with back wages. It was in such circumstances, the observations came from the Apex Court that the appointment was for a fixed period and Section 25-F would not apply and that the employee could be terminated in terms of the letter of appointment and it was a colourable

exercise of power which had to be established. In the said case, re-appointment of the employee was, rather, upheld since the State had only filed an appeal against the judgment of the Division Bench which had granted back wages, which portion was modified. Thus, the said judgment is not applicable in the facts and circumstances of the present case. Here, as a matter of fact, the Labour Court had found that there was unfair labour practice by the Management, while issuing repeated appointment letters of 89 days, which is not permissible u/s 25T of the Act read with Section 2(ra) which refers to unfair labour practice, as specified in the 5th Schedule. Clause 10 of the 5th Schedule reads as under:

10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workmen.

10. Rather, as noticed above, the petitioner's services were terminated on account of one incident in which the petitioner was given no chance to defend himself and no proper enquiry was conducted to establish his guilt even though in his explanation regarding the said incident, he had sought to explain the facts that some teachers were involved to stop the bus and they had purchased the liquor while returning from the Delhi tour. Thus, the petitioner was condemned unheard and the services of the workman were dispensed with only because the Management was in a position to exert influence and take advantage of the unfair terms in his appointment letter.

11. The reference to the judgment in the case of *Municipal Council, Samrala v. Raj Kumar* (supra) also would be of no help to the petitioner to contend that the benefit u/s 2(oo)(bb) of the Act would be applicable in the case of the petitioner since in that case, the employee had been appointed on contract basis after the Municipal Council had taken a decision to engage him on account of 2 employees who were already on leave. His services were dispensed with on the joining of the said employees and he had only been employed on that account when his services were immediately required in the Council. It was, in such circumstances, the Apex Court held that his services could be terminated at any point of time as it was on a contract basis and Municipal Council could dispense with his services and they had a right to do so.

12. The Division Bench judgment in the cases of *Bhikku Ram v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak* (supra), *Director, Health and Family Welfare, Punjab, Chandigarh and Others v. Baljinder Singh and Another* (supra) and *Chief Soil Conservator Punjab and Others v. Gurmail Singh* (supra) were rightly applied by the Labour Court. Rather, in *Trishla Devi v. The Presiding Officer, Industrial Tribunal-cum-Labour Court* 1999 (1) RSJ 60, principles have been discussed in detail regarding the said fact that once the work continued and it did not cease then the defence that it would be covered u/s 2(oo)(bb) was rejected. Relevant observation reads as under:

8. We have thoughtfully considered the respective submissions and carefully

perused the record. Admittedly, the petitioner was offered appointment as ad hoc Clerk on 20.1.1987 in the pay scale of Rs. 400-600 for a period of 89 days without any commitment for regularisation of her service and with a clear stipulation that her services can be dispensed with at any time without assigning any reason. However, on the expiry of 89 days period, the tenure of her service was extended on 20.4.1987 after a gap of 3 days. Similar extensions were granted on 20.7.1987 and 19.10.1987. In the statement made by her before the Labour Court, the petitioner stated that she had worked between 20.1.1987 and 15.1.1988 and she was not given positing order after return from maternity leave and that no notice or compensation was paid at the time of termination of her service. In his examination-in-chief, Rattan Singh stated that the services of the petitioner were dispensed with because they were no longer required and her term expired on 20.3.1988. In the cross-examination, he stated as under:

The worker attended to clerical duties. Regular vacancies existed at the time worker was offered ad hoc appointment for 89 days. By the time she was granted the extension the vacancy also existed. At the time her services were dispensed with I am not sure if vacancy existed. Her services were however terminated in view of the stipulation in her letter of appointment as the department intended to fill the post through regular selected candidates. No regular selection was made by the department except on compassionate grounds or on transfer basis.

If the statement of Rattan Singh is read in conjunction with the admitted facts brought on record, there is little difficulty in holding that the petitioner was appointed as a Clerk on ad hoc basis against a clear vacant post and her service was discontinued even though regularly selected candidate had not been made available. In fact, it is not even the case of the respondents that the services of the petitioner were terminated due to the availability of candidate recommended by the Subordinate Services Selection Board. It is also not their case that the termination of the petitioner's service was necessitated due to the abolition of the post or cessation of work against which she was initially employed. Rather, it is an admitted position that the posts of Clerk were available at the time of termination of her service. In view of this, we are inclined to agree with Shri Nagar that the finding recorded by the Labour Court about the nature of the petitioner's employment and the applicability of Section 2(oo)(bb) of the 1947 Act is perverse. We are also inclined to agree with Shri Nagar that the action of the employer to appoint the petitioner for fixed tenure of 89 days amounts to unfair labour practice resorted by the employer in order to frustrate the rights acquired by the petitioner under the 1947 Act.

13. It is not the case of the petitioner that the workman was terminated due to the abolition of the post or due to the availability of the candidates on regular appointment. The termination of his services for non-compliance of the terms of Section 25-F of the Act had, thus, to be declared null and void. Recently, the Apex Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, and

Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), held that the Labour Court is only to examine the fact that whether the person had completed 240 days in the preceding period, prior to his retrenchment and the nature of appointment was not be seen. It is also settled principle of law that the writ Court is not a Court of appeal and it is only to see whether the Labour Court had jurisdiction while entertaining the reference and whether it acted judiciously or failed to exercise jurisdiction though it was entitled to. In the present case, this Court is of the opinion that the order of the Labour Court is fully justified and no fault can be found in it, directing reinstatement, in view of its findings that there was violation of the mandatory provisions of the Act. Accordingly, there is no scope for interference in the award under challenge and the writ petition is, accordingly, dismissed.