
(2014) 08 P&H CK 0201
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1206/2014 (OandM)

District Red Cross Society

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2014) LLR 1210

Hon'ble Judges : Satish Kumar Mittal, J;Arun Palli, J

Bench : Division Bench

Advocate : K.K. Gupta, Advocate for the Appellant

Judgement

Satish Kumar Mittal, J.—District fled Cross Society, Ambala City (Management) has filed the instant Letters Patent Appeal against the order dated 7.4.2014 passed by the learned Single Judge, whereby the writ petition (CWP No. 3913 of 2012) filed by the appellant - Management challenging the Award dated 17.8.2011 (Annexure P-4) passed by the Labour Court, Ambala, has been dismissed. Though there is a delay of 30 days in filing the appeal and the appellant has filed application (CM No. 2719-LPA of 2014) for condoning the delay, yet we have heard learned counsel for the appellant on merits, and gone through the order, passed by the learned Single Judge as well as the Award passed by the Labour Court.

2. Vide the said award dated 17.8.2011, the Labour Court, while coming to the conclusion that services of the workman (respondent No. 2 herein) were illegally terminated, ordered to re-instate him with continuity and 50% of the back-wages.

3. The respondent-workman is a physically handicapped person. He was appointed as Helping Clerk with the appellant - Management on 15.11.2002 and he continued as such till 17.2.2008, when his services were illegally terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act"). He raised an industrial dispute, which was

referred to the Labour Court. The Labour Court answered the reference in favour of the respondent-workman, and after recording a finding that he had continuously worked for more than 240 days in one calendar year, so the provisions of Section 25-F of the Act were required to be complied with before terminating the services of the workman, but concededly there was no such compliance. After coming to the said conclusion, the respondent - workman was ordered to be re-instated in service with continuity and 50% of the back-wages.

4. The said Award of the Labour Court has been upheld by the learned Single Judge. Keeping in view the facts and circumstances of the case, particularly the fact that the respondent-workman was a handicapped person and the manner in which he was dealt with by the appellant-Management, the learned Single Judge made the following observations:--

"Unfortunately, the petitioner-Society, which is the Red Cross Society itself, has failed to put balm to the petitioner and rather has unnecessarily, without resorting to the proper procedure, dispensed with his services which has led him to litigate successfully. The State, on the one hand, provides reservation for physically handicapped persons and has enacted the persons with disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 and on the other hand, a person who was working with it, his services had been dispensed with, without following any proper procedure, as prescribed under the Act."

5. Learned counsel for the appellant-Management has argued that after termination of the services of the respondent - workman, he was gainfully employed in other Society. According to the learned counsel, that was a better employment. However, this fact was not disclosed before the learned Single Judge. When it has been confronted to the learned counsel as to whether this argument was raised before the learned Single Judge, he has very fairly conceded that it was not raised before the learned Single, because this fact was not in the knowledge of the appellant-Management.

6. In our opinion, the aforesaid argument is without any substance. The question as to whether a terminated workman was gainfully employed or not is a question of fact, and the onus to prove such an issue is on the Management. In the instant case, no such issue was raised either before the Labour Court or before the learned Single Judge. Thus, we do not find any illegality in the order passed by the learned Single Judge.

7. No other argument has been raised by learned counsel for the appellant-Management.

We feel that it is a case, where in spite of the aforesaid observations made by the learned Single Judge, the District Red Cross Society, Ambala City, which is a welfare organisation, has not acted in a reasonable manner. They should have accepted the order and keeping in view the spirit of the Act, a handicapped terminated workman should have been re-instated.

Consequently, this appeal is dismissed with costs of Rs. 25,000, to be deposited with the Haryana State Legal Services Authority.