
(2014) 04 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3913 of 2012 (O&M)

District Red Cross Society

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25-F

Citation : (2014) 143 FLR 138 : (2014) 175 PLR 406

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : K.K. Gupta, Advocate for the Appellant; J.S. Cooner, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—Challenge in the present writ petition is to the award dated 17.08.2011 (Annexure P4) whereby the Labour Court, Ambala has decided the reference in favour of the workman and directed that he be reinstated with continuity of service and 50% back wages. Respondent-workman, who is a physically handicapped person and a Graduate, was appointed as a helping Clerk with the petitioner-Society on 15.11.2002 and he was drawing Rs. 2500/- per month when his services were dispensed with on 17.02.2008. Accordingly, he raised an industrial dispute pleading that his services have been dispensed with, without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (for short, the "Act") and that he had been discriminated against. The petitioner-Society raised the defence of Section 2(oo)(bb) and also took the plea that the Society was not an industry. It was submitted that the contract was for 89 days and that he had not completed 240 days of service in a calendar year.

2. The Labour Court, after examining the statement of the parties, including the workman, came to the conclusion that the workman had put in 240 days of service in the preceding calendar year and there was no evidence regarding the contractual appointment, from time to time and his services were dispensed with

on 17.02.2008, without complying with the mandatory provisions of Section 25-F of the Act.

3. Counsel for the petitioner has vehemently submitted that the award was not justified and the provisions of Section 2(o)(bb) would thus, come into play.

4. The Labour Court has recorded a categorical finding that the appointment was of 89 days but he continued to work till his services were dispensed with. Accordingly, it has rightly come to the conclusion that the workman continued to work beyond the contractual appointment and once having completed 240 days, he was entitled to be given the protection u/s 25-F of the Act. There is no denying the fact that the procedure prescribed of issuing notice and notice regarding pay and compensation was not paid. Accordingly, no fault can be found in the well reasoned judgment passed by the Labour Court which could warrant interference. The argument that the appointment was de hors the rules and without proper procedure and the petitioner, is not industry is only to be rejected because the judgment in Indian Red Cross Society Vs. Additional Labour Court and Others, has been followed in Indian Red Cross Hospital, A Unit of Indian Red Cross Society Vs. The Presiding Officer, Industrial Dispute Tribunal, Karkardooma Court and Mr. Hitesh Kumar

5. The Apex Court in Devinder Singh Vs. Municipal Council, Sanaur, Harjinder Singh Vs. Punjab State Warehousing Corporation, and Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), has held that the source of employment is not to be seen when the provisions of Section 25-F have to be applied and distinguished the observations made in Secretary, State of Karnataka and Others Vs. Umadevi and Others, Another aspect which is to be considered is that the appointment is that of a handicapped person, on an application moved on compassionate grounds. 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. Accordingly, in such circumstances, the writ petition is without any merit and the same is, accordingly, dismissed. It is directed that the respondent workman shall be taken back in service within 2 months from the date of receipt of a certified copy of this order. It is further directed that all the amount's due to the workman shall also be paid at the time of his reinstatement, failing which, respondent No. 1-workman shall be entitled to execute the same, in accordance with law.