

(2000) 09 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16742 of 1999

District Red Cross Society Hisar

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25

Citation : (2001) 2 LLJ 339

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Shailendra Jain, for the Appellant; Mr. Surinder Batra, for Mr. Ashok Arora, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—Written statement by respondent No. 2 filed. Copy given to the counsel for the petitioner. Written statement taken on record.

2. This writ petition has been filed by the employer challenging the award of the Labour Court dated 10.11.1998 (copy annexure P/5) vide which respondent No. 2 was ordered to be reinstated in service with continuity and with 50% back wages. Case of respondent No. 2 is that she was appointed as Social Worker/Counsellor vide appointment letter dated 18.7.1992 of the Secretary of the Red Cross Counselling Centre for Drug Addicts, Hisar hereinafter referred to as the "Management". The project was run by the Ministry of Welfare, Government of India on the basis of yearly grant. The appointment letter is produced in this case at annexure P/1. The terms of appointment are as under:

"You are hereby offered the post of Social Worker/Counsellor in the Red Cross Counselling Centre for drug addicts, Hisar. You will be paid a consolidated salary of Rs. 2000/- per month. Please note that this project is being run by the Ministry of Welfare, Government of India, on the basis of yearly grant and the post is purely temporary and continuous with the project. Your services can be

terminated on the month's notice from either side or payment of one month's salary in lieu thereof. However, your services can be terminated without any notice in case of insubordination or non-performance of duties/job designated for the post.

You will have to go in the field regularly as prescribed for survey and assessment of drug prone area and group awareness programme and follow up services of drug addict patients. This will be an integral part of your duties.

If these terms and conditions are acceptable to you please report for duty to undersigned by 24th July, 1992 failing which it will be presumed that the post is not acceptable to you and the same will be offered to some other candidate."

3. The case of respondent No. 2 is that she was served with a charge sheet with the allegations of claiming false TA for visiting the site on 3.9.93 and playing of fraud with the petitioner. She had sent her reply. Primary enquiry was conducted without associating her and her services were terminated without any regular domestic enquiry. She raised a dispute which resulted in the reference before the Labour Court.

4. The petitioner-Management in the written statement had taken up a plea that order of termination simplicitor was passed in order to avoid hard consequences to respondent No. 2 because in case of dismissal she would have been debarred from seeking future employment. It is also their case that the society should be given an opportunity to prove misconduct independently if it is held that the proper opportunity of being heard was not given to respondent No. 2. It is also contended that she was not workman, within the meaning of section 2(s) of the Industrial Disputes Act (hereinafter referred to as the "Act") and that the termination is not retrenchment as it was as per the terms and conditions of the appointment.

5. It is also contended by the Management that respondent No. 2 was appointed purely on temporary basis and for the duration of the project and her services were also terminable on one month's notice from either side or payment of one month's salary in lieu thereof. It is further contended that she was firstly employed in a project work of temporary nature where the provisions of Section 25F of the Act are not required to be followed. It is also contended that work and conduct of respondent No. 2 was found to be below dignity inasmuch as she has been found guilty of claiming false TA bill.

6. We have heard learned counsel for the parties.

7. Counsel for the petitioner has taken up three points in this case which are as under:

(i) that the petitioner is not an industry;

(ii) that the termination is not bad in view of the appointment letter annexure P/1; and

(iii) proper enquiry was made.

8. Regarding the first point, the Labour Court has observed that for the reasons best known to the petitioner it has not led any evidence nor has brought any material to prove the contention. It has been further observed that respondent No. 2 had to go to the field regularly for survey and assessment of drug prone areas and group awareness programmes and also for follow up services of drug addict patients and as it was an integral part of her duties, she was deemed to be workman and since the petitioner is carrying on systematic activity, so it would be deemed to be an industry. In the case of *State of Haryana v. Jai Kishan and another* 2000(3) R S J 42 : 2000(2) SCT 876 (P&H)(DB) , it has been held by the Division Bench of this Court in that case that when the question whether irrigation department of the State was industry neither pleaded nor any evidence led by the appellant State before the Labour Court, the plea of this nature, the determination of which depends on evaluation of evidence of the parties etc. could not be allowed to be raised for the first time before the writ court particularly when the petitioner has failed to lay factual foundation for such a plea. In the present case, though such plea has been taken, evidence to prove that plea has not been led by the petitioner. In view of the above reasons, we do not find it proper to deviate from the finding recorded by the Labour Court on this point.

9. Regarding the conditions in the appointment letter as can be found from annexure P/1 quoted above, learned counsel for the petitioner has argued that her services were terminable on one month's salary from either side. However, when respondent No. 2 is held to be workman, then any agreement which is contrary to the provisions of the Act cannot debar the rights of the workman. Therefore, this contention cannot be accepted.

10. The next contention is regarding proper enquiry being held. It is clear from annexure P/4 which is written statement filed by (he petitioner before the Labour Court that the termination order is a termination sim-plicitor and the reasons given for the same is that had the petitioner dismissed respondent No. 2 she would have been disentitled to get any Government, job. The petitioner has also stated in the written statement that respondent No. 2 was found to have claimed false TA claim. The Labour Court dealt with this question and has negated the contention of the petitioner. On the contrary the Labour Court has quoted the petitioner's witness saying that the enquiry was the primary enquiry. It is admitted that respondent No. 2 was not associated with the enquiry. No list of witnesses or document was given. When this is the position it cannot be said to be regular domestic enquiry conducted against respondent No. 2. A primary enquiry or preliminary enquiry conducted by the department is a fact finding enquiry and cannot be said to be domestic enquiry against the workman and, therefore, we find that no regular enquiry was conducted against respondent No.

2. Therefore, we do not accept this contention of learned counsel for the petitioner also.

11. In view of the above reasons, this petition is without merit and is dismissed.

12. Petition dismissed.