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**(2001) 09 P&H CK 0024**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 7488 of 1999**

|                                          |            |
|------------------------------------------|------------|
| District Rural Development Agency, Sirsa | APPELLANT  |
| Vs                                       |            |
| Manjit Singh                             | RESPONDENT |

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**Date of Decision :** 17-09-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 10, 10(1), 2

**Citation :** (2001) 09 P&H CK 0024

**Hon'ble Judges :** S.S. Nijjar, J

**Bench :** Single Bench

**Advocate :** Suresh Monga, for the Appellant; Vikas Kumar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.S. Nijjar, J.—In this petition under Articles 226/227 of the Constitution of India, the petitioner District Rural Development Agency, Sirsa (hereinafter referred to as "the management"), seeks issuance of a writ in the nature of certiorari quashing the award dated 13.11.1998. Annexure P-1, passed by the Presiding Officer, Labour Court-cum-Industrial Tribunal, Hisar (hereinafter referred to as "the Labour Court").

2. The management is a society registered under the provisions of the Societies Registration Act, 1860. It is engaged in the welfare activities of Rural Areas of Sirsa District. According to the case put forward by the management, respondent No. 1 (hereinafter referred to as "the workman") was appointed as Peon on daily wages for a fixed period term of three months commencing from 25.1.1995 to 24.4.1995 at a consolidated salary of Rs. 1196/- per month. He was again appointed purely on contract basis for a period of six months from 26.4.1995 to 25.10.1995. In the appointment letter it was specifically mentioned that he is being appointed for a fixed term on contract basis on a fixed amount of Rs. 7176/- which was to be paid to him in six equal monthly instalments. His tenure of contract was further extended by the management by the subsequent letter

dated 26.10.1995. The workman was again engaged on contract basis for the period from 27.10.1995 to 26.4.1996. Copies of the appointment letters have been attached as Annexures P-1 to P-4, with the writ petition. The contract of the workman was not renewed further and he was relieved from duty w.e.f. 26.4.1996. After a gap of five months, he served a demand notice on the management on 21.9.1996. The conciliation proceedings ended in a failure report. Reference of the dispute was, therefore, made u/s 10(1)(c) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act")- After completion of the pleadings, the Labour Court framed the following issues :

1. Whether termination of the service of Manjit Singh is justified and in order ? If not, along with reinstatement to what amount of back wages he is entitled to ?
2. Whether Manjit Singh is not "workman" within its meaning in the Act ?
3. Whether the respondent is not "industry" ?
4. Whether Manjit Singh was engaged for fixed periods and termination is, as per terms and conditions of appointment letter and not "Retrenchment" ?
5. Relief.

3. It was argued before the Labour Court that the term of appointment of the workman was contractual and, therefore, his case does not fall within the definition of retrenchment as given in Section 2(oo) of the Act. It was further pleaded that after the relinquishing his duties, the workman never presented himself for work nor he made any request in writing, hence he must be held to have abandoned the job and left his services at his own accord. It was also pleaded that Manjit Singh was not a workman and the respondent is not an Industry. The workman had specifically pleaded that one Rati Ram, who was junior to him, was retained in services and his services have been subsequently regularised. The workman appeared in the witness box in support of his case. A number of witnesses were examined by the management. After considering the evidence on record, the Labour Court has held that from bare perusal of the appointment letters and also from the admissions of the parties in evidence it is clear that the workman was appointed as Peon on daily wages initially for three months from 25.1.1995 to 24.4.1995. Thereafter, he was engaged on contract basis for six months from 26.4.1995 to 25.10.1995 on consolidated salary of Rs. 1196/- per month. Thereafter, he was again appointed for a period of six months from 27.10.1995 to 26.4.1996, on consolidated salary of Rs. 1270/- per month. The Labour Court has held that there is no merit in the contention of the management to the effect that the appointments of the workman being contractual were not covered within the meaning of Section 2(oo) of the Act. While rejecting the submissions made by the learned counsel for the management, the Labour Court has also observed that Suresh Kumar Goyal, MW-2, has admitted that the work on which the workman (Manjit Singh) was working, was still continuing. The Labour Court relied on two judgments of this Court given in the cases of Rajni Bala v. State of Haryana, 1996(1) SCT 390 and

Balwan Singh v. State of Haryana, 1999(2) SCT 226 (P&H) : 1997(1) RSJ 567 and held that the conditions incorporated in the letter of appointment which are arbitrary, unreasonable or unconstitutional cannot be relied upon by the management to defeat the claim of the workman. The Labour Court has also noticed the plea taken by the management to the effect that the workman has abandoned the job. Thus, it has been held that the work was still available for the workman, Thereafter, it has been held that the management is wrongly claiming that the services of the workman have been terminated as no longer required. It is noticed that the management has not led any evidence to substantiate the plea of abandonment. It is noticed by the Labour Court that there is no rhyme or reason for the poor workman to abandon the job and then to promptly raise an industrial dispute. The Labour Court relying on certain authorities in the cases of Madhya Pradesh Bank Karamchari Sangh v. Syndicate Bank, 1996(1) SCT 199; Balbir Singh v. The Kurukshetra Central Coop. Bank Ltd. 1989(1) SLR 632 and Anr., and Chief Administrator, HUDA and Anr. v. Presiding Officer, Industrial Tribunal-cum-Labour Court and Anr., 1994(2) SCT 738 (P&H) (DB) : 1994(4) SLR 775, has held that Sub-clause (bb) of Clause 2 (oo) of the Act, which was added in 1984, by way of an amendment, cannot be so construed as to drastically restrict the orbit of the term retrenchment. Clause (bb) is an exemption, which must be interpreted narrowly. It cannot be given meaning, which may nullify or curtail the ambit of the principal clause. The Labour Court further observed as follows :-

"No doubt, the intention of the Parliament in enacting Clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to unscrupulous employers to shut out worker in the gard of non-renewal of their contract, even when the work subsists. This clause, as a whole, has to be construed strictly in favour of the workman, as far as possible, as to ensure that the Act is implemented in letter and spirit. If the termination is meant to exploit an employee or to increase the bargaining power of the employer then it has to be excluded from the ambit of Clause (bb) and the definition of term "retrenchment" has to be given full meaning. The contractual clause, enshrined in Clause (bb), cannot be resorted to frustrate the claim of the employee against this uncalled for retrenchment or for denying other benefits. It cannot be so interpreted as to enable the employer to resort to the policy of hire and fire and to confer unguided power on the employer to renew or not to renew the contract, irrespective of circumstances in which it was entered into or ignore the nature and extent of work for which he was employed.

4. Thereafter, the Labour Court proceeded to examine the matter from the point of notional breaks given to the workman and held that the management has resorted to unfair labour practice. In support of this finding, the Labour Court has relied on the judgments given in the cases of Kurukshetra Central Coop. Bank v. State of Haryana and Anr., 1993(1) SCT 109 (P&H) : 1993(1) SLR 147 and Haryana Warehousing Corporation v. Presiding Officer, Labour Court, Rohtak and

Anr., 1997(1) SCT 258.

5. Thereafter, the Labour Court considered the question of relief to be granted to the workman. It has been categorically held that termination of service of the workman was neither in order nor justified. Therefore, it has been held that the workman is entitled to the reinstatement with full backwages and with continuity of service and with all other consequential service benefits.

6. I have heard the learned counsel for the parties at length.

7. The Labour Court, as noticed above, has given a very well considered award both on facts and law. I find that the award does not suffer from any error apparent on the face of it. It can also not be said that the findings of fact recorded by the Labour Court are based on no evidence. It is well settled that while exercising jurisdiction under Articles 226/227 of the Constitution of India, this Court does not examine the findings recorded by the Labour Court or the Tribunal in the manner as are examined by the Appellate Court. This Court has limited jurisdiction to correct the errors which may be jurisdictional or apparent on the face of the award. I find that the award does not suffer from any of the aforesaid infirmities.

8. At this stage, Mr. Monga has vehemently argued that the workman is not entitled to the backwages as it cannot be believed that the workman has not been employed anywhere since 26.4.1996. It is to be noticed that the Labour Court has found both on facts and law that the order of termination of the services of the workman was neither in order nor justified. In such circumstances, the law with regard to payment of back-wages is well settled by a decision of the Full Bench of this Court in the case of Hari Palace, Ambala City v. The Presiding Officer, Labour Court and Anr., 1979 P.L.R. Vol. LXXXI 720. The Full Bench observed as follows :-

"However, all controversy now seems to have been set at rest by their Lordships of the Supreme Court in Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd and Ors., wherein the appeal by Special Leave was expressly limited to the question of grant of back wages. It has been held therein in no uncertain terms :-

"Ordinarily, therefore, a workman whose services has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer".

"Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure".

The aforesaid view has been reiterated by their Lordships in G.T. Lad and Ors. v. Chemicals and Fibres India Ltd."

9. In view of the aforesaid ratio laid down by the Full Bench of this Court, I do

not find any merit in the submissions made by the learned counsel for the management.

10. In view of the above, present writ petition is dismissed with no order as to costs.

11. Petition dismissed.