
(2014) 07 P&H CK 0641
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13260 of 2014

General Manager

APPELLANT

Vs

Nafa Ram

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

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

Citation : (2014) 07 P&H CK 0641

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Aman Bahri, Addl. A.G, Advocate for the Appellant

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The present writ petition has been filed against the Award dated 15.01.2014 (Annexure P-7) whereby, the Labour Court, Bathinda has directed reinstatement of the respondent-workman who was working as a part time Sweeper. The benefit of continuity of service with 30% back wages from the date of demand notice i.e. 05.05.2007 has also been granted to the respondent-workman.

2. A perusal of the paper book would go on to show that the respondent was employed as a Sweeper on 22.06.1992 on monthly pay of Rs. 2,000/- His services were dispensed with on 12.05.2006 and he raised demand notice dated 05.05.2007 taking the plea that juniors to him had been retained in service and new hands had been employed after terminating the services of the applicant.

3. The defence before the Labour Court of the petitioner-department was that he was a part time Sweeper and was being paid money as per duty per hour as per the rate list in the order dated 02.06.1992. In view of the Government Instructions, his services had been dispensed with and he was never appointed against regular post and, therefore, question of regularization did not arise.

4. Before the Labour Court, the workman stepped into the witness box as WW-1

and deposed in his favour whereas Gurdarshan Singh, General Manager was examined on behalf of the petitioner-department.

5. Keeping in view the facts as noticed above, the Labour Court held that proper procedure had to be followed since there was no dispute that he had worked from 09.12.1996 to 09.01.2006 and payment had been made to him as per the admission of the General Manager. Reliance was placed upon the attendance register produced by the petitioner-department's official and it was also noticed that the workman was performing other jobs also and he had worked for a long time and his work and conduct was satisfactory. Accordingly, it was held that the termination was illegal and not justified and against the principles of natural justice.

6. A factual finding has been recorded by the Labour Court in the present case that the respondent-workman has worked for as many as 10 long years with the petitioner-department. While terminating his services, admittedly, the procedure which was required to be followed u/s 25-F of the Industrial Disputes Act, 1947 (in short "the Act") was not followed. The submission of counsel for the State that he was only a part time worker and, therefore, there was no need to comply with the provisions, cannot be accepted in view of the observations of the Apex Court in *Devinder Singh Vs. Municipal Council, Sanaur*, In the said judgment, it has been held that the definition of workman does not make any distinction between full time and part time or a person appointed on contract basis and the source of employment was not relevant while deciding the issue under the Act and reference can be made to the said observations which read thus:-

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

7. In *Harjinder Singh Vs. Punjab State Warehousing Corporation*, , it was noticed that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and indirectly punishing the tiny beneficiary of the wrong. The present case also is such a case wherein, the department has taken the services at its convenience of the respondent-workman for 10 long years and rejected his case for regularization on the technical plea that he was a part time employee. It has been factually noticed that he also was doing other work while working in the department and it is a matter of fact that he had been paid Rs.

2,000/- at a point of time. In his claim petition also, he has specifically averred regarding the fact that he was performing other jobs such as fetching the dak from the post office, attending to departmental functions etc.

8. Accordingly, this Court is of the opinion that the discretion which has been exercised by the Labour Court directing reinstatement and restricting the back wages only to 30% is not liable to be interfered with as it is settled position that this Court is not sitting as a Court of Appeal and is only to correct an apparent error on the face of the record.

9. The argument which is now sought to be raised that the department is not an industry and as such, the Labour Court would have no jurisdiction, is also without any basis since admittedly, no such plea was taken before the Labour Court. Had such a plea been taken, the workman would have produced necessary evidence as the onus would have then shifted upon him. It is settled principle that a defence which has not been taken before the Labour Court cannot now be allowed to be raised for the first time in a writ Court which does not have the benefit of the reasoning given by the Tribunal which would have dealt with the issue after hearing both the sides.

10. Accordingly, this Court is of the opinion that there is no justification to interfere with the well reasoned Award passed by the Labour Court and the present writ petition is dismissed in limine.