
(1979) 11 P&H CK 0026
In the Punjab And Haryana At Chandigarh

Kanshi Rum Verma

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 16-11-1979

Acts Referred:

Punjab Municipal Act, 1911 — Section 45(1)

Citation : (1980) 2 LLJ 96

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Judgement

R.N. Mitral, J.—This judgment will dispose of Civil Writ Petition Nos. 3807 of 1977 and 1736 of 1978 by which the same order of the Labour Court has been impugned. The facts in the judgment are being given from C.W.P. No. 1736 of 1978.

2. The case of the Municipal Committee, Mansa, petitioner, is that it recruited Kanshi Ram, respondent No. 2, as a Municipal Overseer on temporary basis in the pay scale of Rs. 200-10-280-15-430-20-450 plus D.A. as admissible under the Rules. The said respondent joined the post on September 4, 1974. It is alleged that the respondent was required to furnish a certificate from a recognized University that he had passed a diploma examination in engineering and his affidavit to the effect that he was not a dismissed employee, within a period of one week from the date of joining. It is then averred that he did not file the requisite certificate and the affidavit. Consequently, his services were terminated.

3. After termination of the services, the respondent got the following question referred to the Labour Court:

Whether the termination of the services of Kanshi Ram, workman, is justified and in order? If not, to what relief, exact amount of compensation is he entitled?

4. It is then averred that the Labour Court, without taking into consideration the law, held, vide order dated August 4, 1977, that the termination of his services

was illegal. The Tribunal further held that he was entitled to a sum of Rs. 200 as compensation for his back wages. The Municipal Committee has challenged the aforesaid order. Respondent No. 2 in Civil Writ Petition No. 3807 of 1977 has challenged the part of the order that the petitioner was entitled to full back wages.

5. First, I shall deal with the case of the Municipal Committee. Mr. Mittal, learned Counsel for the Municipal Committee, has vehemently argued that the petitioner was a temporary employee and his services were terminated in accordance with Section 45(1) of the Punjab Municipal Act (hereinafter referred to as the Act). He further submits that Chapter IV of the Punjab Municipal (General) Rules does not apply to the present case as the petitioner was not dismissed but his services were terminated.

6. I have heard the learned Counsel at a considerable length and find force in his contention. The Committee pleaded in its writ petition that respondent No. 2 was a temporary employee. The workman did not file a return to the petition. Therefore, it will be assumed that he admitted the allegations that he was a temporary employee. The Tribunal has also held that he was working as a temporary employee. In order to determine whether his services could be terminated u/s 45(1) it is necessary to read the said Section. It is as follows:

In the absence of a written contract to the contrary, every officer or servant employed by a committee shall be entitled to one month's notice before discharge unless he is discharged during a period of probation or for misconduct or was engaged for a specified term and discharged at the end of it.

From a reading of the Section it is clear that a person recruited on probation can be discharged during his period of probation. A temporary municipal servant is on the same footing. Even otherwise the services of a temporary servant can be dispensed with at any time. Therefore, the petitioner's services could be terminated by the Committee even without serving one month's notice.

7. There is, however, one exception to the above rule. It is, that if the services of such employee are terminated on account of misconduct or incompetence that cannot be done unless the procedure prescribed in Chapter IV of the Rules is followed, as such a termination falls in the definition of the word "dismissal." It is defined in Rule 1 as follows:

In these rules, "Dismissal" means permanent removal from a substantive appointment for misconduct or incompetence and includes discharge for misconduct under Sub-section (1) of Section 45 of the Act.

In the present case the petitioner had asked the respondent to furnish a certificate that he had passed the diploma in engineering from a recognized university and the affidavit that he was not a dismissed employee. He failed to furnish the certificate as well as the affidavit.

8. It cannot be disputed that a person can not be employed as a Municipal

Overseer unless he is qualified to hold that post. It was the duty of respondent No. 2 to have furnished a certificate as required by the Municipal Committee. It is also provided in Rule 3BB of Chapter I of the Rules that no person shall be employed in the service of a Municipal Committee, unless his character and antecedents are verified beforehand by a reference to the Police Department except that in the case of a temporary vacancy the previous verification shall be dispensed with and in the case of permanent vacancy relating to technical personnel, the appointment shall be made subject to the condition that his character and antecedents shall be verified by the police. It is further provided that where a person was dismissed from the service of the Government or local body he cannot be employed unless previous sanction of the Government was obtained. From the aforesaid Rule, it is evident that the Municipal Committee had to satisfy itself that he was not a dismissed employee of the Government or local body. It is the case of the Municipal Committee that the said respondent was given repeated opportunities to produce the certificate and the affidavit but he failed to do so. In the aforesaid circumstances, it cannot be said that his termination was illegal. In my view, the Labour Court has taken an erroneous view of the matter and held that the termination of respondent No. 2 was illegal. Consequently, the award of the Court is liable to be set aside.

9. In case the termination of the services of respondent No. 2 was not illegal, then he was not entitled to any back wages. The writ petition filed by the workman is, therefore, liable to be dismissed on this ground.

10. For the aforesaid reasons, I accept Civil Writ Petition No. 1736 of 1978 and quash the impugned award. I, however, dismiss Civil Writ Petition No. 3807 of 1977.

11. No order as to costs.