

(2001) 08 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1387 of 2001

Omwati Devi

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1), 2, 25

Citation : (2001) 08 P&H CK 0082

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

Bench : Single Bench

Advocate : Gurinder Pal Singh, for the Appellant; R.A. Yadav, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This petition under Articles 226/227 of the Constitution seeks issuance of a writ in the nature of certiorari for quashing the impugned order dated 7th June, 2000 given by Presiding Officer, Labour Court, Gurgaon (hereinafter referred to as "the Labour Court") whereby the reference has been answered against the petitioner (hereinafter referred to as the workman). The workman was appointed as nurse with Lok Kalyan Samiti, Village Chakkarpur, District Gurgaon (hereinafter referred to as "the management"). Her services were terminated on 29th November, 1994. At the time of the termination of her services, petitioner was not given any retrenchment compensation or notice. Thus, there was non-compliance of Section 25-F of the Industrial Disputes Act (hereinafter referred to as "the Act"). The workman served a demand notice on the respondent on 6th December, 1994. After the conciliation proceedings failed, the appropriate Government referred the matter to the Labour Court u/s 10(1) (c) of the Act. Both the parties led evidence and the Labour Court by its award dated 7th June, 2000 answered the reference against the workman. After completion of the pleadings, the Labour Court framed the following issues :-

"(1) Whether the respondent is not an industry ?

(2) Whether the petitioner is not a workman ?

(3) Whether the applicant is gainfully employed, if so, its effect ?

(4) As per terms of reference."

2. Issue No. 1 has been decided in favour of the management and it has been held that it does not fall within the definition of "industry" u/s 2(j) of the Act. A number of the authorities were cited before the Labour Court which are noticed in paragraph 7 of the award, but the Labour Court has distinguished the same by holding that the aforesaid judgments are of different facts than the facts of the reference. To say the least, this is a very novel method of distinguishing the authorities which the party has cited in support of the submissions made. This apart, I am of the considered view that the Labour Court has clearly misdirected itself by holding that the management would fail under the exclusionary clauses of industry. The work which is being done by the management could easily be entrusted to any other private organisation. Therefore, it could not have been held that this activity is not capable of been exploited commercially. If that be so, it cannot be held that the management is not an industry, issue No. 2 has again been decided against the workman in View of the fact that issue No. 1 has been decided in favour of the management. In issue No. 3 it has been held that there is no evidence produced by the management to show that the workman was gainfully employed anywhere. Even issue No. 4 has been decided against the Workman predominantly on the conclusion reached by the Labour Court with regard to issue No. 1. The opening line of discussion of issue No. 4 states that "on account of my conclusion arrived at in the above discussed issues, it cannot be said that termination of services of Smt. Omwati Devi was unjustified. She was retained by M/s Lok Kalyan Samiti for the period of her services were required of the uplift of the masses. After termination of the job she was relieved from her duties and she was offered some compensation by it, though it was not required under the law." I think the courts can take judicial notice of the fact that masses of India have not fully been uplifted even today. On the face of it, the conclusions reached by the Labour Court are perverse and based on no evidence. I am of the considered view that the conclusions reached by the Labour Court with regard to issue Nos. 1 and 2 are also perverse and are against the settled law enunciated by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The Labour Court, after reproducing the relevant extracts, has failed to apply the ratio to the facts of the present case. The allegations of the workman that she has worked for 240 days in a year preceding the termination of her services has not even been denied by the management. Consequently, it is held that the award dated 7th June, 2000, endorsed on 23rd June, 2000 given by the Labour Court suffers from an error apparent on the face of the record and is, therefore, liable to be quashed and set aside.

3. In view of the above, the writ petition is allowed. The award mentioned above is hereby quashed and set aside. The workman is directed to be reinstated into

service with continuity of service and full back wages. No costs.