
(2020) 02 P&H CK 0217

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22411, 22509 Of 2015

Rajpal And Anr

APPELLANT

Vs

Presiding Officer And Anr

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(A), 25, 25(E), 25(F), 25(H), 25(G)

Citation : (2020) 02 P&H CK 0217

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Krishan Singh Dadwal, K.K. Gupta

Final Decision : Dismissed

Judgement

Augustine George Masih, J

1. By this order, I propose of decide two writ petitions, wherein challenge is to the two awards dated 27.11.2014 (Annexure P-19) passed by the

Industrial Tribunal-cum-Labour Court, U.T. Chandigarh, whereby the two references have been answered against the workmen-petitioners herein,

where the petitioners on their termination had challenged the same.

2. With the consent of the counsel for the parties, both these matters were taken up together and the counsel had argued their respective cases with

reference to CWP No.22411 of 2015 and thus, the facts are being taken therefrom as they are identical.

3. Facts, when stated in brief, are that petitioners were appointed in the year 1984 on the post of Ground Boy in the Government Model School, Sector

16, Chandigarh. They were drawing a fixed amount per month since their initial appointment in the year 1984. When on 01.04.1987, their services

were terminated, a dispute was raised, wherein the Industrial Tribunal-cum-Labour Court vide award dated 04.03.1991, set aside the termination of

the petitioners on the ground that the provision of Section 25E of the Industrial Disputes Act, 1947, has not been complied with and ordered

reinstatement in service with effect from 01.04.1987, the date of their termination with full back wages and continuity of service.

4. The said award was challenged by filing CWP No.7970 of 1991 by the management, which was dismissed by this Court vide order dated

17.01.1992 (Annexure P-2). Petitioners, were reinstated in service in compliance with the order passed by the Tribunal and submitted a representation

dated 14.10.1998 claiming regularization of the services in view of the policy dated 11.09.1996 framed by the Chandigarh Administration, according to

which on completion of 240 days of service, daily wage workers were to be considered as regular. On non-consideration of the claim of the petitioners

for regularization, petitioners filed CWP No.3954 of 1999, which was withdrawn and thereafter legal notice was served on 06.04.1999. Ultimately

petitioners were forced to file CWP No.9234 of 1999, whereby directions were issued by this Court to the management to consider and decide the

above legal notice within a period of four months from the date of receipt of the order dated 14.07.1999. The said representations were rejected on

22.01.2000 which was challenged by the petitioner by filing OA No.371-CH-2000 before the Central Administrative Tribunal, Chandigarh Bench,

Chandigarh, which dismissed the same on 15.05.2000 (Annexure P-3) without issuing notice to the respondents.

5. This order was challenged by the petitioners by filing CWP No.8614 of 2000. Division Bench of this Court allowed the said writ petition by setting

aside the order dated 15.05.2000 (Annexure P-3) passed by the Central Administrative Tribunal and remanded the case for fresh decision vide order

dated 05.03.2001 (Annexure P-4). The case after reconsideration was allowed on 03.01.2003 holding the order of rejection of the representation/legal

notice of the petitioners as illegal and ordered regularization of the petitioners against appropriate Group 'D' posts with all benefits of service as regular employee.

6. The said order was challenged by filing CWP No.16228-CAT of 2003 by the Chandigarh Administration and the management of the school, in

which ex parte stay was granted by the High Court, however, on an application moved by the petitioners, order dated 08.02.2005 of the High Court

was vacated, against which the management filed a Special Leave Petition before the Supreme Court, which was allowed. In pursuance thereto,

petitioners were retrenched by the management on 30.08.2008.

7. Petitioners filed an application before this Court with a prayer for staying the order of termination, which was allowed but the petitioners were not

allowed to join duty. Petitioners filed COCP No.1548 of 2008, wherein notice was issued to the management, however, the contempt proceedings

were dropped.

8. Thereafter demand notice under Section 2A of the Industrial Disputes Act was issued to the management, wherein the grievance raised by the

petitioners was relating to the retention of new persons, who were junior to them in violation of the provisions of Sections 25H and 25G of the

Industrial Disputes Act. It was asserted that no show cause notice, charge-sheet was issued to the workmen nor any inquiry conducted by the

management and thus, praying for setting aside of the termination order dated 30.08.2008 and reinstatement with full back wages, continuity of service

and other consequential benefits.

8-A. Management-respondents herein contested the case and took a stand that the petitioners were engaged as part-time Ground Boy and Sweeper

out of the amalgamation fund and health fund respectively and not out of the consolidation fund of the Government. A policy decision was taken by

the Government not to engage any manpower out of any of the funds and the said funds should be utilized for the purpose for which they were

created and meant. Decision was also taken that all the manpower engaged for various casual works out of different funds be discontinued by the

concerned fund incharge after following due process of law. It was further asserted that in pursuance to the said decision, services of the petitioners

were discontinued on 30.08.2008 and they were paid retrenchment compensation in terms of Section 25 of the Industrial Disputes Act, which the

petitioners refused to accept and the same was sent to the petitioners through registered post by way of bank draft dated 30.08.2008. It was also

pleaded that the order of retrenchment was justified before the Contempt Court in the High Court, which had accepted the same and, therefore,

dismissed the same. Prayer was thus, made for dismissal of the reference.

9. Replication was filed by the petitioners and on the basis of the pleadings, the issues framed by the Labour Court read as follows:-

â??(1) Whether there is relationship of workman and employer between the parties? OPW

(2) Whether the workman was engaged by the Incharge Amalgamation Funds and was being paid from the amalgamation fund, if so, to

what effect? OPW

(3) Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what the workman is

entitled to, if any? OPW

(4) Relief.â??

10. Evidence was led by the petitioners, who stepped into witness box in support of their respective claims as AW-1 and for the management, the

incharge of the respective funds appeared as MW-1 separately in both the references.

11. Learned Industrial Tribunal-cum-Labour Court, on considering the respective contentions of the parties as per the evidence led by them and the

pleadings, proceeded to hold that the workmen were not regular/permanent employees of the management and were appointed by the incharge of the

amalgamation fund/health fund out of the respective funds. However, the relationship of employer and employee between the workman and

management-respondent No.2 was established. On the basis of the evidence which has been led by the management, it was established that the

workmen had been appointed by the incharge of the concerned fund and the workmen have been paid out of the said fund from the very beginning.

Management was maintaining the cash book which proved this fact.

12. As regards the provisions of Section 25F of the Industrial Disputes Act are concerned, the workman admitted in his cross-examination that he was

paid the compensation and one month wages vide demand draft dated 30.08.2008, which was sent by registered letter as the same was refused by the

workmen. It was further held that the management had complied with the provisions of Section 25 of the Industrial Disputes Act. It was also held that

the Principal had no authority to appoint any person in the school, therefore, it cannot be said that the management had illegally terminated the services

of the workmen. Labour Court, therefore, proceeded to hold the termination to be in accordance with law, however, direction was issued to the management to issue a fresh demand draft of the amount which was earlier prepared and not encashed by the workmen, the reference were, therefore, declined. Issues were decided against the workmen-petitioners.

13. Workmen-petitioners have, therefore, approached this Court challenging these two awards passed by the Industrial Tribunal-cum- Labour Court by way of these two writ petitions.

14. Learned counsel for the petitioners, with reference to the earlier observations made by this Court in its various orders which have been passed, submits that the petitioners were entitled to be considered for regularization of their services but instead of regularizing their services, respondent-

management has proceeded to retrench them by taking a plea that there is no regular post sanctioned against which they can be regularized and

further that their appointment was on pure contract basis from the funds by the concerned teacher, who was managing the said fund. It is not the case

of the respondents that the work, which was being performed by the petitioners, has come to an end, rather the same work is being now performed

through persons supplied by the contractor through outsourcing. He contends that the petitioners have been working with the respondents continuously

for a long time i.e. from the year 1984 till the date of their termination on 30.08.2008 and despite such a long service with the respondents, their claims

for regularization have not been considered. His submission is that the services of the petitioners have been terminated in violation of the order dated

17.01.1992 passed by the Division Bench of this Court in CWP No.7970 of 1991, where the challenge was to the award dated 04.03.1991 passed by

the Labour Court, whereby the petitioners were ordered to be reinstated in service with a further direction to the management to consider the claim of

the petitioners for regularization. He asserts that there has been violation of the provisions of Section 25F of the Industrial Disputes Act while

terminating the services of the petitioners and, therefore, the petitioners are entitled to the benefit of reinstatement in service with continuity thereof. In

support of this contention, he has placed reliance upon the judgments passed by the Hon'ble Supreme Court in the case of Anoop Sharma Vs.

Executive Engineer, Public Health Division No.1, Panipat (Haryana) 2010 (5) SCC

49,7 Devinder Singh Vs. Municipal Council, Sanaur 2011 AIR

SCW 3455, Jasmer Singh Vs. State of Haryana and Anr. 2015 (2) S.C.T. 91 ,Municipal Council, Dina Nagar Vs. Presiding Officer, Labour Court,

Gurdaspur and another 2014 (70) R.C.R. (Civil) 119 ,Bharat Sanchar Nigam Ltd. Vs. Man Singh 2012 (1) S.C.T. 641J, aswinder Singh Vs. The

Presiding Officer and others 2014 (70) R.C.R. (Civil) 123, Asst. Engineer, Rajasthan Dev. Corp. and Anr. Vs. Gitam Singh 2013 (2) S.C.T. 30 and

Khajjan Singh and others Vs. State of Haryana and others 2015 (1) S.C.T. 604. He, therefore, prays for setting aside the impugned award and

answering the reference in favour of the petitioners.

15. On the other hand, learned counsel for the respondent-management has asserted that the orders which were passed by this Court, reference

whereof has been made by the counsel for the petitioners, stood duly complied with and their claim for regularizing as made, on consideration, has

been rejected, which order of rejection has been upheld by the competent Courts. That apart, it is asserted that the Labour Court, on taking into

consideration the pleadings and the evidence led by the parties, has returned a categoric finding that the provisions of Section 25F of the Industrial

Disputes Act stands duly complied with. His contention is that the earlier observations of this Court have been taken into consideration by the

respondent-management while considering the claims of the petitioners with regard to their claim of regularization and that the factors which have

been taken into consideration are relevant, especially in the light of the fact that the appointment of the petitioners was without following the due

process of law and their appointment was on pure contractual basis and that too from the amalgamation/health fund and that too by the concerned

teacher, who was managing the said fund. It has further been stated that even the Principal does not have the power to appoint anyone. It is asserted

that the policy decision was taken by the respondent-management that no engagement will be made of any manpower out of any fund and the said

fund will be utilized for the purpose it is meant and thus, cannot be diverted. A decision was further taken to discontinue with the services of the

manpower engaged for various casual works out of the various funds after following due process of law, which decision has been given effect to by

the respective teachers managing the concerned respective funds through which

manpower was engaged for various casual works. While outsourcing with the services of such workforce, the provisions of Section 25F of the Industrial Disputes Act stand duly complied with, which finding has been returned by the Industrial Tribunal- cum-Labour Court in its award dated 27.11.2014. In view of the above, prayer has been made for dismissal of the writ petitions.

16. I have considered the submissions made by counsel for the parties and with their assistance, have gone through the pleadings and the documents placed on record including the evidence before the Labour Court, reference whereof has been made by the counsel for the parties and do not find any illegality in the impugned award date 27.11.2014 passed by the Presiding Officer, Industrial Tribunal-cum- Labour Court, U.T. Chandigarh. Each of the three issues which have been culled out by the Industrial Tribunal-cum-Labour Court have been dealt in detail by the said Court on the basis of the pleadings and the evidence brought on record. It has rightly been observed by the Labour Court that the earlier judgments which have been passed in favour of the petitioners resulted in reinstatement of the petitioners. Their claim for regularization has also been considered by the respondent-management and keeping in view the various orders which have been passed by the Court, the respondent-management has rightly proceeded to retrench the services of the petitioners, which aspect this Court also agrees that the issue which was under consideration before the Labour Court was whether the services of the workmen were terminated illegally by the management and, therefore, had to confine to the reference which was made to it. With regard to first issue relating to the relationship of the employer and the employee is concerned, the evidence as led has been rightly appreciated to conclude that the workmen were not regular/permanent employees of the management and were appointed by the incharge of the concerned fund out of the said fund and the management having admitted this fact that the workmen were working with them, relationship of employer and employee stood established.

17. As regards the second issue relating to the engagement of the workmen by the incharge of the concerned fund and the payment being made through the said fund, the evidence which has been led by the management clearly proved on record that the appointment was made by the incharge

of the concerned fund. In the case of petitioner-Raj Pal, who was working as a Ground Boy, the appointment was through the amalgamated fund and in the case of petitioner-Badloo Parsad, he was appointed as a Sweeper out of the health fund right from the beginning and they were being paid from the said respective funds for which the management had maintained the cash book which has been produced in evidence before the Industrial Tribunal-cum-Labour Court. In the examination-in-chief, statement to that effect was made by the management witness, on which aspect there has been no cross-examination.

18. As regards issue No.3, relating to the services of the workmen being terminated illegally by the management, the Industrial Tribunal-cum- Labour Court has, on the basis of the admission made by the workman in his cross-examination, wherein the workman has admitted that he was paid compensation and one month wages by demand draft dated 30.08.2008 and order was Exhibit M-1, which he refused to accept, leading to the sending of the same through registered letter. Even the photocopy of the demand draft which was placed on record as Exhibit M-2 was admitted by him. This proved the factum of the compliance of the provisions of the Industrial Disputes Act relating to the provisions of Section 25F. Petitioners themselves having refused to accept the compensation, the findings have rightly been returned by the Labour Court that the termination of the workmen cannot be said to be illegal.

19. A plea has been taken that the petitioners have been replaced by another set of contractual employees, who have been engaged through outsourcing. In this regard, the evidence which has been placed on record, clearly establishes the fact that respondent No.2-management has no role to play in the contract which has been entered into between the service provider and Chandigarh Administration-respondent No.1. No workman was engaged under the concerned fund after retrenchment of the petitioners and respondent No.2-management of the school would call for the services of the concerned person from the Chandigarh Administration, which would thereafter provide the person through the service provider for performance of the required work and the payment is also made by the Chandigarh Administration. It was further stated that none has been appointed in place of the petitioners-workmen from any of the funds of the school. Therefore, it cannot be

said that the petitioners have been replaced by another set of employee(s).

20. It is not in dispute that the appointment of the petitioners otherwise was not made through due process of law i.e. by complying with the statutory rules. The petitioners have also not been able to establish that there were sanctioned posts, against which they were appointed. What has been proved on record on the basis of the oral as well as the documentary evidence, as referred to above, is that the petitioners were appointed through the concerned funds by the teacher, who was managing the said fund and on a policy decision having been taken for not using the said funds for the purpose except for which it was created and further to dispense with the services of the manpower appointed under such funds, respondent No.2-

management of the school has proceeded to comply with the same. Nothing has come on record which would indicate that after the termination of the services of the petitioners, any other person has been appointed through any of the funds of the school being maintained.

21. The judgments on which reliance has been placed by learned counsel for the petitioners i.e. Anoop Sharma Vs. Executive Engineer, Public

Health Division No.1, Panipat (Haryana), Devinder Singh Vs. Municipal Council, Sanaur, Jasmer Singh Vs. State of Haryana and Anr.,

Municipal Council, Dina Nagar Vs. Presiding Officer, Labour Court, Gurdaspur and another, Bharat Sanchar Nigam Ltd. Vs. Man Singh,

Jaswinder Singh Vs. The Presiding Officer and others, Asst. Engineer, Rajasthan Dev. Corp. and Anr. Vs. Gitam Singh and Khajjan Singh

and others Vs. State of Haryana and others (supra) relate to those cases where the Court had come to a conclusion on the basis of the pleadings

and evidence brought on record that provisions of Section 25F of the Industrial Disputes Act have not been complied with and, therefore, the said

judgments would not be applicable to the case in hand.

22. In view of the above, finding no merit in both the writ petitions, the same stand dismissed by upholding the impugned awards.