
(2014) 12 P&H CK 0171
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6859 of 2012

The Head Master, Govt. Primary School	APPELLANT
Vs	
Roop Kala and Others	RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 25-F, 25-G, 25-H

Citation : (2015) 2 SCT 231

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Sunil Nehra, Senior Deputy Advocate General, Advocates for the Appellant; Chanderhas Yadav, Advocates for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—In the present petition prayer is for quashing of the award dated 16.8.2011, Annexure P5, passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar vide which while answering the reference in favour of respondent No. 1, directions have been issued to reinstate her in service. Mr. Sunil Nehra, Senior Deputy Advocate General, Haryana appearing for the petitioner, would contend that finding has been recorded by the Labour Court as regards violation of Section 25-H of the Industrial Disputes Act (for short "the Act") and which, in turn, pre-supposes a valid termination, and respondent No. 1 was at best entitled to be reemployed from the date when another employee, namely, Smt. Sheela had been employed. Learned counsel contends that reinstatement in service could not have been directed. It has also been argued that respondent No. 1 had been employed purely on daily wage basis and such engagement was not in pursuance to any regular selection process and as such, would be construed to be in violation of the scheme of equality envisaged under Articles 14 and 16 of the Constitution of India and as such, the relief of reinstatement granted by the Labour Court cannot sustain. It has also been argued that respondent No. 1 has been out of service since the year 2005 and the Labour Court, while directing reinstatement, has not taken into consideration

the passage of time that has since elapsed and has also overlooked the aspect that another workman has since been employed and working for the past many years and her services would have to be dispensed with to accommodate respondent No. 1. Further submission raised is that even if there was a violation of Section 25-H of the Act, services of respondent No. 1 had been disengaged in pursuance to an enquiry having been conducted and the Management having lost confidence in the employee. Mr. Nehra would submit that it would not be in the interest of the petitioner-School if respondent No. 1 is permitted to be reinstated in service at this stage.

2. Per contra, learned counsel appearing for respondent No. 1, would support the impugned award by submitting that the plea taken on behalf of the employer is contradictory. On the one hand, it had been stated that respondent No. 1 had left the job of her own accord and, on the other hand, a plea had been raised that an enquiry had been conducted and her work and conduct was not upto the mark. Learned counsel would argue that the demand notice had been issued by respondent No. 1 without any delay and a finding as regards violation of Section 25-H of the Act having been recorded, there would be no infirmity as regards relief of reinstatement having been granted. Learned counsel for respondent No. 1 has also argued that the Labour Court has balanced the equities and has denied the back wages and under such circumstances, it would not be a fit case for this Court to intervene in its supervisory jurisdiction, insofar as the impugned award is concerned.

3. Learned counsel for the parties have been heard at length.

4. The case set up on behalf of respondent No. 1 was that she had been appointed as a Cook in the petitioner-School on 15.7.2004 under the Mid-Day Meal Scheme launched by the State Government on payment of daily wages @ Rs. 75/- per day and she had worked continuously upto 1.8.2005. Her services had been terminated in violation of Sections 25-F and 25-H of the Act as she was neither given notice mentioning reasons for retrenchment nor wages in lieu of notice period nor retrenchment compensation and after terminating her services, another lady, namely, Smt. Sheela was appointed in her place without affording to her opportunity of re-employment.

5. Perusal of the impugned award would reveal that in pursuance to an application having been moved by respondent No. 1, the service record in the nature of muster roll and attendance register for the period 15.7.2004 to 1.8.2005 had been summoned and which was duly produced. As per record produced i.e. Exhibits W 1 to W9, respondent No. 1 was found to have worked only for a period of 134 days. As such, a finding has been recorded by the Labour Court that since respondent No. 1 had not completed 240 days in the preceding 12 months from the date of termination of her services, she is not entitled to the benefit of provisions contained in Section 25-F of the Act.

6. Insofar as Section 25-H of the Act is concerned, it has been recorded that one

Smt. Sheela has been appointed in place of respondent No. 1 on the recommendation of the Gram Panchayat and without affording an opportunity of re-employment as per mandate of Section 25-H of the Act. The version of the employer that the employee had left the job of her own has been disbelieved by noticing that as per document, Exhibit MW1/A, the work and conduct of the employee was not upto the mark and it was the reason to employ Smt. Sheela in her place. The testimony of MW 1 Om Parkash, Head Teacher of the School was also noticed who had deposed that an enquiry had been conducted by the Block Education Officer, Hansi against respondent No. 1. This Court does not find any basis to warrant interference even as regards the view taken by the Labour Court of violation of Section 25-H of the Act.

7. However, the Labour Court has erred in granting the relief of reinstatement to respondent No. 1 who was, admittedly, engaged purely on daily wage basis. A Division Bench of this Court in State of Haryana through Executive Engineer, PWD, Public Health Division No. 2, Sonipat v. Ishwar Singh and another, 2008(3) SCT 788 has held that a daily wage employee is not entitled to reinstatement even if there has been violation of Sections 25-F, 25-G and 25-H of the Act, but would be entitled to compensation.

8. The Hon"ble Supreme Court in Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, has held as under:

"From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it in expedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief."

9. In the case of Gitam Singh (supra), the award of the Labour Court directing reinstatement of a daily wager who had worked hardly for eight months along with continuity of service and 25% back wages, was set aside even though the same had been affirmed by the Single Judge as well as the Division Bench of the High Court. Instead, compensation of Rs. 50,000/- had been directed.

10. Applying the dictum laid down in Gitam Singh's case (supra), the present petition is allowed. The impugned award dated 16.8.2011 at Annexure P5 is set aside. Compensation of Rs. 50,000/- to respondent No. 1 who had worked on

daily wage basis as a Cook for a period of 134 days is held to be adequate to meet the ends of justice. Ordered accordingly. Such payment be made to respondent No. 1 within eight weeks from today, failing which the same will carry interest @ 8% per annum. Petition is allowed in the aforesaid terms.