

(2015) 04 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6630 of 2015 (O&M)

Vice Chancellor, Guru Nanak Dev University, Amritsar and
Others

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (oo)(bb), 2(oo) (bb), 2(oo)(bb), 25F

Citation : (2015) 179 PLR 475 : (2015) 3 SCT 505

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Amrit Paul, for the Appellant; Amarjit Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Amit Rawal, J.—This order of mine shall dispose of two writ petitions bearing Nos. 6630 and 7045 of 2015.

2. For the sake of convenience, the facts are being taken from CWP No. 6630 of 2015.

3. The Management has approached this Court by challenging the Award dated 5.12.2014 passed by the Labour Court, whereby, the reference has been decided in favour of respondent No. 2 and she has been ordered to be reinstated on the post of Junior Library Attendant-cum-Peon from the date of alleged termination and further entitling her of entire back wages along with interest at the rate of 12% per annum from 8.3.2008 till reinstatement.

4. Mr. Amrit Paul, learned counsel appearing on behalf of the petitioner, in support of his submissions, contended that respondent No. 2 was appointed on contract/adhoc basis i.e. temporary service and the terms and conditions of the appointment clearly envisaged that appointment was for a period of 89 days and the service could be terminated at any time without issuing notice. He has

referred to one of the appointment letters, though all are from the years 2003 till 2007. For the sake of convenience, one of the copies of the appointment letter is reproduced herein below:-

"Smt. Parveen Kumari Through: Head, Bhai Gurdas Library

No.13020/Estt. Date 5/9/03

Subject:- Regarding Appointment as Junior Attendant- cum-Peon.

You are appointed on the post of Junior Library Attendant-cum-Peon in the Guru Nanak Dev University, Amritsar on the following terms and conditions:-

1. You will be paid basic pay of Rs.2620/- plus admissible allowances in the pay scale of Rs.2520-100- 3220-110-3660-120-4140.
2. Your this appointment will be on contract for a period of 89 days.
3. Your this appointment will be considered from the date of your reporting for duty, i.e., from date 9.9.2003 till 5.12.2003.
4. Your these services can be terminated at any time without issuing notice.
5. If the above conditions are acceptable to you, then send a copy of this appointment letter to this office by giving acceptance of these conditions thereon under your signatures.

Proforma concerning Medical examination is attached herewith which may be submitted to this office after getting yourself Medically examined from the Medical Officer, Health Centre, Guru Nank Dev University, Amritsar.

You are requested to join duty immediately in the office of Head, Bhai Gurdas Library.

Encl: As Above

Sd/- Assistant Registrar (Estt.) For Registrar

Endst. No. 13021-22/Estt.A

Date 5/9/03

Copy of the above is sent to the following for information and necessary action:-

1. Finance and Development Officer.
2. Head, Bhai Gurdas Library.

It is requested that the case for extension of appointment of this employee may be sent before expiry of the same at least 20 days in advance.

Sd/- Assistant Registrar (Estt.) For Registrar"

5. He further submitted that in view of the terms and conditions of the appointment, respondent No. 2 was appointed for a fixed duration and this fact

was in the knowledge of respondent No. 2 and thereafter, on expiry of contract, termination cannot be said to be in violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act"), but was in accordance with the provisions of Section 2 (oo)(bb) of the I.D. Act. In support of his submissions, he relied upon the following judgments of Hon"ble the Supreme Court, Division Bench and Single Bench of this Court, respectively:-

1. The Haryana State Agricultural Marketing Board vs. Subhash Chand and another 2006 (2) S.C.T. 23.

2. Municipal Council, Samrala Vs. Sukhwinder Kaur, AIR 2006 SC 2905 : (2006) 110 FLR 1155 : (2006) 3 LLJ 502 : (2006) 7 SCALE 614 : (2006) 6 SCC 516 : (2006) SCC(L&S) 1436 : (2006) 4 SCR 381 Supp : (2006) AIRSCW 4091 : (2006) 6 Supreme 181 .

3. Vidyavardhaka Sangha and Another Vs. Y.D. Deshpande and Others, (2006) 111 FLR 397 : (2006) 9 SCALE 641 : (2006) 12 SCC 482 : (2007) 2 SCC(L&S) 320 : (2006) 7 SCR 470 Supp : (2007) 2 SLJ 234 .

4. Suresh Kumar Sharma vs. Presiding Officer, Labour Court, U.T. Chandigarh and another 2006 (4) S.C.T. 672.

5. Hari Niwas Vs. Presiding Officer, (2014) 175 PLR 701 .

6. After referring to the aforementioned case law, learned counsel for the petitioners submitted that the Award of the Labour Court is vitiated in law, erroneous, much less, perverse and therefore, liable to be dismissed.

7. Mr. Amarjit Singh, learned counsel appearing on behalf of the respondent-caveator submitted that the workman/respondent No. 2 was though appointed from time to time for a particular duration but the work which she was performing did not cease to exist on the date of termination of service and the job which respondent No. 2 was performing continued to be required by the employer. Therefore, the termination of the services of respondent No. 2 by the petitioner- Management was not in good faith and the petitioner-Management cannot be permitted to take aid/invoke the provisions of Section 2(oo) (bb) of the I.D. Act. He further submitted that the act of the Management by taking aid of the provisions of Section 2(oo)(bb) of the I.D. Act is vitiated in law, much less, erroneous, for the reason, that employer on the next contract could not terminate the service of respondent No. 2 and when job/post was available, then it is an act of unfair practice.

8. In support of his aforementioned submissions, he relied upon the following judgments of Hon"ble the Supreme Court and as well as Division Bench of this Court:-

i. S.M. Nilajkar and others vs. Telecom District Manager, Karnataka 2003(4) Supreme Court Cases 27.

ii Bhikku Ram vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court,

Rohtak, in CWP No. 11851 of 1994 decided on 28.11.1994.

9. By referring to the aforementioned case law, he further submitted that the job of Junior Library Attendant-cum-Peon is still available and therefore, the Management-petitioner cannot be permitted to urge that the services of respondent No. 2-workman were no longer required.

10. In rebuttal, learned counsel for the petitioners submitted that the termination of workman on 17.3.2008 was in pursuance to the terms and conditions of appointment letter dated 26.11.2007, as further contract/adhoc/temporary appointment was not recommended by the Head of the Department.

11. I have heard learned counsel for the parties and appraised the case law cited by the learned counsel for the parties in support of their respective submissions.

12. In The Haryana State Agricultural Marketing Board's case (supra), Hon'ble the Supreme Court had the occasion to retrench the workman, who, was appointed on seasonal basis i.e. during the "wheat season" or the "paddy season" and after noticing the contents of the terms and conditions of the appointment, it found that the services of the seasonal worker were contractual and would be governed as per provisions of Section 2(oo)(bb) of the I.D. Act.

13. In Municipal Council Samrala's case (supra), the employee was terminated on the ground that he was appointed as Clerk at a fixed pay of Rs. 1000/- per month as per the directions of the Government and within a span of about 18 months, the said person was appointed thrice and disengaged thrice and by relying upon the case law rendered by Municipal Council, Samrala's case (supra) and S.M. Nilajkar's case (supra), Hon'ble the Supreme Court found that provisions of Section 2(oo)(bb) of the I.D. Act, were attracted. It was held that each and every case would be opined whether the issue of retrenchment would come within the provisions of aforementioned provisions or not.

14. In Vidyavardhaka Sangha's case (supra), Hon'ble the Supreme Court had an occasion to deal with the matter pertaining to the appointment of workman, who, was appointed as Assistant Teacher in the school on consolidated salary on contractual basis. Further, Hon'ble the Supreme Court by referring to the terms and conditions of the appointment found that the appointment of the workman was of fixed term and ended by efflux of time, therefore, such person cannot hold such post or have no right to hold such post.

15. The Division Bench of this Court in Suresh Kumar Sharma's case (supra) also dealt with the provisions of Section 2(oo) (bb) of the I.D. Act, as to whether the termination of the workman, who, has been appointed on fixed term, much less, the nature of the term being contractual was in the knowledge of the workman by relying upon judgment of Hon'ble the Supreme Court in Haryana State Agricultural Marketing Board's case (supra) that retrenchment was in consonance with the provisions of Section 2(oo)(bb) of the I.D. Act.

16. In Hari Niwas's case (supra), Single Bench of this Court had dealt with the

provisions, whereby, the Computer Operator/Data Entry Operator was appointed under the outsourcing policy with the Municipal Committee and the the appointment was fixed for a period of six months and his services cannot be said to be terminated in violation of Section 25F of the I.D. Act, but, was actually in accordance with the provisions of Section 2(o)(bb) of the I.D. Act.

17. Learned counsel for respondent No. 2 by relying upon judgment of Hon'ble the Supreme Court in S.M. Nilajkar's (supra) submitted that several casual labourers were engaged during the years 1985-86 and 1986-87 for the purpose of expansion of Telecom Facilities in Karnataka and their services were terminated in the year 1987. Thereafter, they were not engaged on work and the plea of the Management was that their services were terminated as per the provisions of Section 2(o)(bb) of the I.D. Act, therefore, it cannot be terminated was in violation of Section 25F of the I.D. Act. Hon'ble the Supreme Court while noticing the argument of the Management found the Government being Welfare State floats several schemes and projects generating employment opportunities, though they are short-lived but the objective is to meet the need of the moment and found that termination of the services of the workman did not fall within the category of provisions of Section 2(o)(bb) of the I.D. Act and therefore, ordered for reinstatement of workman. Similar view of Division Bench of this Court was taken in Bhikku Ram's case (supra), wherein, this Court after noticing the fact found that since the work did not cease to exist on the date of termination of service of the workman and the job continued to be required by the employer, the alleged termination of the workman was, thus, not found to be under the provisions of Section 2(o)(bb) of the I.D. Act and was held to be in violation of Section 25F of the I.D. Act.

18. In view of the ratio descendi culled out in the aforementioned case law cited by the respective parties to the lis, the foremost question for adjudication of dispute, in the present case is "whether the services of the workman was terminated in violation of Section 25F of the I.D. Act or under the provisions of Section 2(o)(bb) of the I.D. Act", is to be answered by referring to the need of the work, availability of the work and the evidence brought on record.

19. In the instant case, respondent No. 2 categorically stated in examination-in-chief that juniors to her are still working with the department and she had been paid as regular employee and even increments were also granted to her during the period, she remained from 2003 to 2008. Management's witness, Manohar Singh, who, appeared as WW1, to a specific question in cross-examination stated that Smt. Parveen Kumari, used to be given increments by the University by counting the days on which she had worked and not by treating her as regular and confirmed employee. The relevant portion of the cross-examination is extracted herein below:-

"Smt. Parveen Kumari was never given appointment for the period from 9.6.2003 to 7.3.2008. Smt. Parveen Kumari used to be given increments by the University by counting the days on which she had worked and not by treating her as regular

and confirmed employee."

20. Smt. Balwinder Kaur, MW1, when appeared in cross- examination to a specific question answered that the Junior Attendants were appointed in the Library. However, her cross- examination was deferred but when she again appeared for cross- examination, she did not answer as to how many Juniors were appointed after the appointment of workman and the relevant portion is extracted herein below:-

"The initial appointment and subsequent extensions were given with the approval of the competent authority of the management. The appointment of person was never challenged during her work period. The Junior Attendants were appointed in the Library. I do not know how many persons were recruited after the termination of the work person. I cannot tell as how many persons were appointed or not after the relieving of the present workman.

I can tell after verifying the record. Further cross- examination of the witness is deferred on the request of A.P. for the workman on this point.

XXXX No person was appointed after relieving the workman from her service. I do not know how many Junior Library Attendants-Cum-Peon were appointed after the appointment of workman. I have seen the mark-A. The same does not depict the true position regarding the appointments and the employees working in the GNDU."

21. The Labour Court by relying upon the principles culled out by Full Bench Judgment of this Court in LPA No. 754 of 2010 titled as Municipal Council, Dina Nagar, Tehsil and District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another decided on 10.10.2014, held that since the juniors to the workman are still working in the Department, it cannot be believed that the work did not exist on the date of the termination, in other words, job continuous to be required by the employer and rightly answered the reference in favour of the workman.

22. From the cumulative reading of the statement of Management's witness, there is no doubt that juniors to respondent No. 2 have been retained as the Management failed to bring on record any evidence to rebut the said assertions or answer the question by relying upon the documentary evidence, thus, it is, irresistibly, concluded that job on which respondent No. 2 was appointed is still available and it has not ceased to exist, therefore, the termination of respondent No. 2 cannot be said to be in accordance with the provisions of Section 2(oo)(bb) of the I.D. Act, but in fact, has been terminated in violation of provisions of Section 25F of the I.D. Act. The Labour Court, after appreciating the evidence, has rightly ordered reinstatement and full back wages along with interest at the rate of 12% per annum from 8.3.2008 till reinstatement.

23. Since the facts and circumstances of the instant case are squarely covered by the ratio descendi in Bhikku Ram's case (supra) and S.M. Nilajkar's case

(supra) and the judgments cited by the petitioners are not applicable as each and every case for the sake of repetition is to be decided on consideration of facts and circumstances of each case. It has consistently been held by Hon''ble the Supreme Court's judgment that the provisions of Section 2(oo) (bb) of the I.D. Act are not applicable to the facts and circumstances as each and every case is required to be seen individually.

24. In view of what has been observed above, the Award of the Labour Court is upheld and accordingly, the writ petition is dismissed.