

(2014) 01 P&H CK 0160

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 15852 of 1993

Shiv Bahadur

APPELLANT

Vs

Presiding Officer, Industrial
Tribunal-cum-Labour Court

RESPONDENT

Date of Decision: Jan. 23, 2014

Acts Referred:

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

Citation: (2014) 175 PLR 286

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: R.K. Malik, Sr. Advocate and Samrat Malik, Advocate for the Appellant; Ranjit Saini, Advocate for the Respondent

Final Decision: Dismissed

Judgement

G.S. Sandhawalia, J.

Challenge in the present writ petition is to the award dated 16.09.1993 (Annexure P2) whereby the Labour Court, Hisar, came to the conclusion that the services of the workman were rightly terminated and the said action was justified and it was held that he was not entitled for any relief. A perusal of the record of the writ petition would go on to show that the petitioner-workman was appointed as Chokidar, on probation for one year, with the respondent-school on 30.11.1984 and his services were allegedly terminated on 21.11.1987 and accordingly, it was claimed that there was violation of the mandatory provisions of the Industrial Disputes Act, 1947 (for short, the "Act")

2. The stand of the Management was that the worker was appointed as Chokidar for a period of one year and as per the terms of the appointment letter, his probation period could be extended for a further period of one year, as decided by the competent authorities. The probation period was extended on 20.11.1985 and it was

lastly extended vide order dated 01.02.1987. The work of the workman was not satisfactory as he remained absent and his services were terminated only in accordance with the terms of the contract of his appointment. The Management appended the letter dated 20.11.1985 and 01.02.1987 on record as Exhibits M-1/A and M-3 respectively and on the basis of the said evidence, the Labour Court came to the conclusion that the probation period was extended upto 01.12.1987 and his services were dispensed with during the period of probation and before the completion of the probation period and it was also noticed that On 29.08.1985 (Exhibit M-4) and 31.03.1986 (Exhibit M-2), explanation had been called for and the worker had submitted his explanation as Exhibits M-6 and M-1. Accordingly, it was held that the workman had no right to the post as he was still on probation and the order of termination was innocuous and cast no stigma. Accordingly, it was held that the termination was in accordance with the terms of his appointment letter and it was justified and the workman was held not entitled for any relief.

3. Learned Senior Counsel, appearing for the workman, has vehemently submitted that once the workman had completed 240 days of service, then the mandatory conditions of notice, notice regarding pay and compensation, have not been complied with and the termination could be held to be illegal and workman was entitled for reinstatement. He has placed reliance upon judgment of Apex Court in [Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another,](#) and judgment of this Court in [The Ambala Central Co-operative Bank Ltd. Vs. The Presiding Officer, Labour Court and Another,](#)

4. Counsel for the Management, on the other hand, defended the order of termination stating that it was well justified and placed reliance upon the appointment letter dated 30.11.1984 (Annexure R1) and also on Rule 8 of the Haryana Aided Schools (Security of Service) Rules, 1974 (for short, the "Rules") to submit that as per the rules, the maximum period of probation was 3 years and the services have been dispensed with during the period of probation and the order was not stigmatic in any manner and no enquiry was required. Reliance has also been placed upon Section 2(o)(bb) of the Act.

5. After hearing counsel for the parties, this Court is of the opinion that no fault or exception can be found with the well reasoned order of the Labour Court. There is no denying the fact that the worker was appointed and was on probation, when his services were dispensed with. The appointment letter provides the following terms and conditions which is important to note under Clause (1), which reads as under:

1. He/she shall be on probation for a period of one year(s) in accordance with the rules which can be extended for such further period as the competent authority under the Rules may determine.

6. From the terms and conditions of the appointment letter, it would be clear that the probation period of the petitioner was for a period of one year and the same

could be extended for such further period, as the authority under the rules may determine. The Rule further provides that the term of probation can be extended till a period of 3 years. Relevant portion reads as under:

8. Probation: (Section (4)(i))

The persons appointed to any post in the service shall remain on probation for a period of two years, if appointed by direct recruitment and one year, if appointed otherwise.

Provided that any period officiating appointment shall be reckoned as period spent on probation but no person who has so officiated shall, on the completion of the prescribed period of probation be entitled to be confirmed, unless he is appointed against a permanent vacancy.

2) If in the opinion of the appointing authority, the work or conduct of a persons during the period of probation is not satisfactory it may:-

a) if such person is appointed by direct recruitment dispense with his service and

b) if such person is appointed otherwise than by direct recruitment:-

ii) Deal with him in such other manner as the terms and conditions of his previous appointment permit,

3) On the completion of the period of probation of a person, the appointment authority may:-

a) if his work or conduct has, in its opinion been satisfactory:-

i) confirm such person from the date of his appointment if appointed against permanent vacancy or

ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or

iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy; or

b) if his work or conduct has, in its opinion, been not satisfactory.

i) dispense with his service, if appointed by direct recruitment, or of appointed otherwise, revert him to his former post or deal with him in such other manner as the terms and conditions of his previous appointment permit; or

ii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the first period of probation. Provided that the total period of probation and thereafter pass such order as shall not exceed three years.

7. From the abovesaid reading of the Rules, it would be clear that a person who remains on probation for a period of 2 years in direct recruitment, his services could

be dispensed with, if his work and conduct was unsatisfactory. Sub-clause (3) further provides that on completion of period of probation, the employer could confirm the said person from the date of his appointment, if appointed against a permanent vacancy and under Sub-clause (iii), it was to be declared that he had completed his probation period satisfactorily and his services could be dispensed with and under Sub-clause (b)(ii), his period of probation could be extended and the order could be, thereafter, passed, as if it could be passed on expiry of first probation period and the total period of probation would not exceed 3 years. Thus, in terms of the Rules, the workman's services could be dispensed with, within a period of 3 years. A categorical finding was recorded by the Labour Court that the work and conduct of the worker was not satisfactory and explanations were asked for including the one on 31.03.1986, during his period of probation. Section 2(oo)(bb) is an exception clause whereby the services of the workman can be dispensed with on account of non-renewal of the contract of employment or on the contract being terminated, under a stipulation, as contained therein. The said section reads as under:

Section 2(oo)(bb) termination of the service of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;

8. The Apex Court in *Municipal Council, Samrala v. Raj Kumar* (2006) 3 SCC 81 examined the provisions of the said section and held that it contemplates two parts and under the second part, the contract of employment could be terminated under the stipulation contained. Relevant portion of the judgment read as under:

10. Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf. The learned Presiding Officer of the Labour Court as also the High Court arrived at their respective findings upon taking into consideration the first part of Section 2(oo)(bb) and not the second part thereof. The circumstances in which the respondent came to be appointed have been noticed by us hereinbefore.

11. The appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of employees as also the terms and conditions of their services indisputably are governed by the provisions of the relevant Municipal Act and/or the rules framed thereunder. Furthermore, there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorised therefor. The agenda in question was placed before the Executive Council with a view to obtain requisite direction from it wherefor the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two

employees were on leave and in that view of the matter, services of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the respondent came to be appointed on the terms and conditions approved by the Municipal Council.

12. We have noticed hereinbefore that the respondent understood that his appointment would be short-lived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so.

9. In the present case, the Management has acted as per the terms of the contract inter se the parties. The Management has terminated the services of the workman, which was the contract inter se the parties. No exception can be found to the said action. The judgments relied upon by counsel for the petitioner also are not applicable. In the case of M. Boraiah (supra), the judgment was delivered on 01.11.1983 whereas Section 2(oo)(bb) was inserted on 18.08.1984 and thus, the said judgment would not be applicable. The case of Ambala Central Co-operative Bank Ltd. (supra) would also not be applicable as no notice was given to the workman nor any disciplinary proceedings were initiated against him before the order of termination and there was no enquiry against him. Accordingly, it was in such circumstances, while placing reliance upon M. Boraiah (supra), it was held that even in a case of probationer, Section 25-F would be applicable. In view of Municipal Council, Samrala (supra), the said judgment would have no binding precedent. Accordingly, this Court is of the opinion that no fault can be found in the well reasoned order of the Labour Court and the writ petition is consequently, dismissed.