IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 (04 cases) **CWP-26239-2017 (O&M)**
Date of Decision :30.04.2025

The Superintendent of Police, Rohtak **...Petitioner**

Versus

Raj Kumar and another **...Respondents**

CWP-3661-2018

The Superintendent of Police, Rohtak **...Petitioner**

Versus

Krishan Kumar and another **...Respondents**

CWP-23528-2017 (O&M)

The Superintendent of Police, Rohtak **...Petitioner**

Versus

Sunil Kumar and another **...Respondents**

CWP-26230-2017

The Superintendent of Police, Rohtak **...Petitioner**

Versus

Sanjit and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Saurabh Girdhar, AAG, Haryana for petitioner-State.

Mr. Ravinder Malik (Ravi) Advocate for respondent No.1. in all the petitions.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petitions, the challenge is to the awards passed by the Presiding Officer, Labour Court, Rohtak in the respective petitions by which, the respondents-Workmen have been reinstated in service with continuity and full back wages on the ground that the respondents-Workmen had completed 240 days in 12 months prior to their termination and Section 25-F of the Industrial Disputes Act, 1947, (hereinafter referred to as '1947 Act') has not been complied with and though, the respondents-Workmen were appointed for a fixed tenure but the extension was being given to them with notional break of short duration, which amounts to unfair labour practice hence, the termination of the services of respondents-Workmen is bad.

2. Learned counsel for the petitioner-State submits that once, it has already come on record even in the statement of the respondents-Workmen that they were appointed through the outsourcing agency and that too for a limited period, which period was being extended by the outsourcing agency, recording of the finding by the Labour Court that department is the principal employer of the respondents-Workmen or there was unfair labour practices in appointing the workmen for a fixed tenure

and then granting them extension is incorrect and without appreciating the provisions of Section 2(oo)(bb) of the 1947 Act.

3. Learned counsel appearing on behalf of the respondents-Workmen submits that as per his information, the respondents-Workmen were never appointed through the outsourcing agency and once, the termination of service of the respondents-Workmen were held to be bad, the awards passed by the Labour Court are perfectly valid and legal and the writ petitions filed by the petitioner-State may kindly be dismissed.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. A bare perusal of the impugned award would show that the respondents-Workmen conceded before the Labour Court that they were appointed through the outsourcing agency keeping in view the policy envisaged at the relevant time. It has been further conceded that they were appointed for a particular period of time, which period was being extended and they were being paid salary at the D.C. rate. Once, the respondents-Workmen conceded the fact that they were appointed through the outsourcing agency and the objection was raised by the petitioner-State qua the master and servant relationship, the Labour Court was required to adjudge on the basis of evidence which came on record as to whether the said appointment will amount to existence of any master and servant relationship between the respondents-Workmen and the petitioner-department or not.

6. In the present case, it is a conceded position that no appointment order has been issued by the petitioner-State in favour of the

respondents-Workmen and the stand taken by the petitioner-State before the Labour Court is also that the respondents-Workmen were working under the outsourcing policy and that too for a particular period though, the said period was being extended.

7. As per the judgment of the Hon'ble Supreme Court of India in ***SLP (Civil) No.19648-2023 titled as, The Joint Secretary, Central Board of Secondary Education and another vs Raj Kumar Mishra and others decided on 17.03.2025***, the factum of master and servant relationship has to be proved on the basis the documents. Relevant paragraphs of the said judgments are as under:-

> "6. Having considered the facts and circumstances of the case(s) and submissions of learned counsel for the parties, we find 3 substance in the contentions of learned counsel for the appellants. The issue whether the private respondents were employees of the appellants, is the crux of the matter. Whatever material has been placed and even the best point which was argued by the learned Senior Counsel for the private respondents before this Court was that since there was supervisory and jurisdictional control over the private respondents by the appellants, ipso facto, they would become employees of the appellants is noted only to be rejected.
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> 7. This is not only a very simplistic approach, but also a totally erroneous approach in law. For a person to claim employment under any organization, a direct master-servant relationship has to be established on paper. In the present case(s), admittedly, the only document, which the private respondents have in their favour, is showing that they were posted at various places doing different nature of work.
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> 8. This clearly in the considered opinion of the Court would not establish master-servant relationship."

8. In the present case, no appointment order has been brought on record by the respondents-Workmen to prove the factum of master and servant relationship between the department and them.

9. Further, no record that the respondents-Workmen were being paid by the petitioner-State directly, has been brought on record. In the absence of any such evidence brought on record, recording of finding by the Labour Court that the termination of the services of the respondents-Workmen was bad by terming the same as unfair labour practice, is contrary to the facts and the evidence which has already come on record.

10. Further, it has also come on record that the respondents-Workmen were appointed for a particular period, which period was being extended and the services of the respondents-Workmen came to an end due to non-extension of the said contract, which fact has also gone unrebutted.

11. When applying Section 25-F of the 1947 Act in such cases, the Court has to look into the provisions of Section 25-F as well as Section 2(oo) (bb) of the 1947 Act. Relevant provisions of Section 25-F as well as Section 2(oo) (bb) of the 1947 Act are as under:-

> "**25F. Conditions precedent to retrenchment of workmen.**
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> No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a)the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
>
> (b)the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] or any part thereof in excess of six months;

> and(c)notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette."
>
> **"Section-2(oo)(bb)**:-"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> 3 [(bb) termination of the service of the workman as a result of the non-renewal 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; or]."

12. A bare perusal of the above reproduction would show that where the services of the workman came to an end due to non-extension of contract, the same will not amount to retrenchment so as to entitle the workman for the grant of benefit of retrenchment compensation. The Labour Court has totally misdirected itself in recording the finding that the petitioner is the employer of the respondents-Workmen. That being so, the awards passed by the Labour Court are contrary to the facts and evidence which has already come on record as well as provisions of 1947 Act, and the same cannot be sustained.

13. Further, the grant of extension of fixed tenure has been treated as unfair Labour practice by the Labour Court. Nothing has come on record as to how appointing a person for a fixed term and then granting an

extension amounts to unfair labour practice. Due reasons has to be mentioned while recording the said finding whereas, in the present case, no such reason has been given by the Labour Court while recording such finding.

14. Keeping in view the totality of the fact and circumstances of the present case as well as provisions of 1947 Act, the impugned awards passed in the respective petitions being contrary to the facts and evidence brought on record cannot be sustained in the eyes of law and are accordingly set aside and as the provisions of 1947 Act was not violated, no relief can be granted to the respondents-workmen.

15. All the petitions are allowed in above terms.

16. Civil miscellaneous application pending if any, is also disposed of.

17. A photocopy of this order be placed on the file of connected cases.

April 30, 2025 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No