

Before Hemant Gupta and Nawab Singh, JJ.

**EXECUTIVE ENGINEER, T.R.W. WORKSHOP,
UHBVN,—Petitioner**

versus

**PRESIDING OFFICER, LABOUR COURT
AND ANOTHER,—Respondents**

C.W.P. NO. 758 OF 2008

16th October, 2008

Constitution of India, 1950—Art.226—Industrial Disputes Act, 1947—S.25-F—Termination of services of a part time sweeper—Workman completing 240 days in a calendar year—Whether entitled for regularization of services—Held, no.—Appointment without following any service rules/regulations—No opportunity to all eligible candidates to apply—Award of Labour Court reinstating workman with continuity of service and back wages is factually illegal and unwarranted—Petition allowed, impugned award set aside.

Held, that even if the workman has completed 240 days in a calendar year, still the employment in question was a public employment and the workman was employed without following any service rules and regulations and giving an opportunity to all the eligible candidates to apply and be considered for appointment. The award of the Labour Court reinstating the workman with continuity of service and back wages is factually illegal and unwarranted.

(Para 7 & 11)

Sudhir Kumar, Advocate for the petitioner

R.S. Mamli, Advocate for respondent No. 2

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order dated 4th September, 2007 (Annexure P-3), whereby the respondent-

workman was ordered to be reinstated with continuity of service and full back wages.

(2) It is the case of the petitioner that the respondent-workman was appointed as a part time sweeper on 13th September, 1994. He continued to work till 25th July, 2001 when, as per the workman, his services were terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act").

(3) In reply, it was the stand of the Management that the workman worked from 26th July, 2000 to 25th July, 2001 as part time sweeper in TRW workshop, Mathana and that the workshop where the workman was engaged has since been closed down and, therefore, there was no scope for any part time sweeper. Consequently, the services of the workman were terminated being junior most in the category.

(4) Learned Labour Court found that the workman continuously worked with the Management, though with breaks for more than 240 days and, thus, the termination of his services without giving him any notice is in violation of the provisions of Section 25-F of the Act. In view of the said finding, the Labour Court answered the award in favour of the workman and set aside the order of termination.

(5) Counsel for the petitioner has relied upon a Full Bench judgement of this Court rendered in **Gobind versus The Presiding Officer, Labour Court, Jalandhar and another**, Civil Writ Petition No. 4660 of 1999 decided on 22nd May, 2008, wherein it has been held that a part time employee is not entitled to claim compensation contemplated under Section 25-F of the Act. In view of the aforesaid judgement, the finding recorded by the Labour Court that the retrenchment is in violation of the provisions of Section 25-F of the Act is not sustainable.

(6) Hon'ble Supreme Court in **BSNL versus Mahesh Chand (1)**, was dealing with the case of a part time employee. It has been held therein that the engagement on part time basis, depending upon the need and requirement for a period of 2-3 years periodically, will not entitle the workman for reinstatement with continuity of service. Even

if the workman has completed 240 days, still engagement of the workman was not against a sanctioned post nor made by following the procedure prescribed for public employment i.e. by advertising and giving an opportunity to all the eligible candidates to apply and consideration for appointment to the post.

(7) Learned counsel for the petitioners has contended that even if the workman has completed 240 days in a calendar year, still the employment in question was a public employment and the workman was employed without following any service rules and regulations and giving an opportunity to all the eligible candidates to apply and be considered for appointment. Reliance has also been placed on a decision of the Supreme Court in case reported as **Mohboob Deepak versus Nagar Panchayat, Gajraula (2)**, wherein it has been held that even if the workman has completed 240 days of service, he is not entitled to be reinstated as the appointment is de hors the rules. It has been held that ad hoc or daily wager employees are not entitled to invoke Article 14 and 16 of the Constitution as such entry in Government service is back door entry. A Division Bench of this Court in CWP No. 13533 of 2006 titled **Executive Engineer, Provincial Division, PWD B&R Branch, Jind versus Om Parkash and another**, decided on 26th July, 2007 has held that an employee on daily wager is not entitled to be appointed/regularization in public appointment. The Court held to the following effect :—

“We have considered this matter in Civil Writ Petition No. 18587 of 2004 Tek hand **versus The Presiding Officer and others**, decided on 20th July, 2007, wherein after referring to the judgments of the Hon’ble Supreme Court in **SM Nilajkar and others versus Telecom District Manager, Karnataka 2003 (4) SCC 27** and **Municipal Council, Samrala versus Raj Kumar, 2006 (3) SCC 81**, it was observed that terminated of services of daily wager will not amount to retrenchment and will be covered by except (bb) to Section 2 (oo) of the Act, It was further observed after referring to judgments of the Hon’ble Supreme Court in **Himanshu**

Kumar Vidyarthi *versus* **State of Bihar**, AIR 1997 SC 3567, **Reserve Bank of India** *versus* **Gopinath Sharma**, 2006 (6) SCC 221 and **Gangadhar Pillar** *versus* **Siemens Limited**, 2007 (1) SCC 533 that an employee employed as a daily wager could not be reinstated/regularization in public employment which is governed by rules and regulations”.

(8) In **The Executive Engineer, PWD B&R Provincial Division, Fatehabad** *versus* **Bhajan Singh and another**, CWP No. 2270 of 2007 decided on 12th September, 2007, this Court held to the following effect :—

“The law has undergone a sea change. The right of a person such as respondent, has been considered by the Hon’ble Supreme Court in **Municipal Council, Samrala** *versus* **Raj Kumar** (2006) 3 SCC 81, **Himanshi Kumar Vidyarthi** *versus* **State of Bihar**, AIR 1997 SC 3657, **Gangadhar Pillai** *versus* **Siemens Ltd.** (2007) 1 SCC 533, **State of M.P. and others** *versus* **Lalit Kumar Verma**, (2007) 1 SCC 575.

Having regard to the given judgments rendered by the Hon’ble Supreme Court of India, we find that the entry in service of the respondent-workman was illegal and, therefore, he has no right to be reinstated. Such a decision would be clearly contrary to the law laid down by the Hon’ble Supreme Court of India, in the judgments referred to above.”

(9) In **Sector Superintendent-1, Government Livestock Farm, Hisar** *versus* **Om Parkash**, CWP No. 2396 of 2006 decided on 14th November, 2007 this Court held to the following effect :—

“It is not in dispute that respondent No. 1 took entry in service in public employment in total disregard to the statutory provisions and the rules. Since the entry in service of respondent No. 1 itself was illegal, therefore, as per the law laid down by the Hon’ble Supreme Court of India in **Municipal Council, Samrala** *versus* **Raj Kumar**, (2006) 3 SCC 81, **Gangadhar Pillai** *versus* **Siemens Limited**, (2007) 1 SCC 533, **Indian Drugs and Pharmaceuticals Limited**

versus Workmen, (2007) 1 SCC 408, Reserve Bank of India *versus* Gopinath Sharma and another, (2006) 6 SCC 221 and UP Power Corporation Limited and another *versus* Bijli Mazdoor Sangh and others, (2007) 5 SCC 755, he is not entitled to reinstatement. In such circumstances, the case would fall under section 2 (oo) of the Act and the provisions of Section 25-F of the Act would not be attracted”.

(10) The said view is the consistent view of this Court in numerous other judgments.

(11) In view of the aforesaid judgments, we are of the opinion that the award of the Labour Court, Annexure P-3, reinstating the workman with continuity of service and back wages is factually illegal and unwarranted.

(12) Consequently, the present writ petition is allowed and the impugned award, Annexure P-3, is set aside.

R.N.R.

Before M.M. Kumar & Jora Singh, JJ.

**S.M.D.R.S.D. COLLEGE SOCIETY, PATHANKOT AND
ANOTHER,—*Petitioners***

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 15563 of 2008

21st October, 2008

Constitution of India, 1950—Art.226—Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974—S. 2(a)—Appointment as a Lecturer on an unaided post—Probation period extended—Management finding work & conduct of teacher not satisfactory—Termination of services during extended period of probation—Factum of intimation regarding extending period of