

Dist. P. No.

53628
53380

PENDING FOR

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W-5

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

To

- 1 - The Presiding Officer, Industrial Tribunal cum Labour Court, Rohtak
- 2 - Estate officer, HUDA, Bhiwani

SUBJECT

CIVIL WRIT No.

888 Oidaf

Estate officer, HUDA, Bhiwani

--Petitioner(s)

Versus

Suresh Kumar Sharma and others

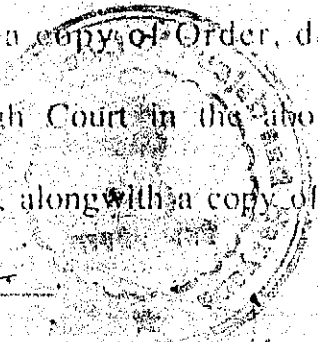
The Presiding Officer, I.T. Labour Court,

---Respondent(s)

Sir,

In continuation of this Court's Order, dated 2-5-08

I am directed to forward a copy of Order, dated 31-10-08
 passed by the Hon'ble High Court in the above noted Civil Writ Petition, for
 immediate strict compliance, along with a copy of Annexure P-12. Order dt
 passed in CWP No. _____ of _____



Given Under The Seal Of This Court On This 6th Day Of Nov 2008

BY ORDER OF THE JUDGE IN CHARGE

Superintendent (Writs)

TS

FILED TODAY
 No. 193534
 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

For Private Use

Civil Writ Petition No. 6958 of 2008

Dealing Assistant

Estate Officer, HUDA, Bhiwani.

FILED TODAY
 No. 193534
 U.D. ADD. 2008
 Petitioner
 READER TO
 JOINT REGISTRAR

Versus

1. Suresh Kumar Sharma, s/o Sh. Raghubir Dutt Sharma, Baisena, Tehsil Tosham, Distt. Bhiwani.

2. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak.

Respondents

REFILED TODAY
 No. 1247
 24 APR 2008
 193534

CIVIL WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF CERTIORARI FOR QUASHING THE IMPUGNED AWARD (ANNEXURE P/12) DATED 26.09.2007 PASSED BY LEARNED PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK (RESPONDENT NO. 2);

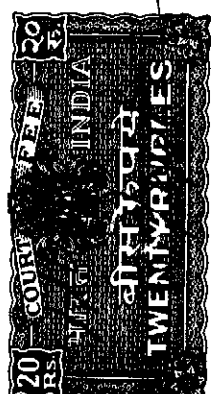
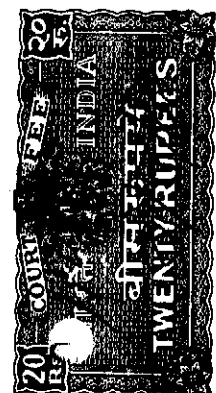
AND

PASSING OF ANY OTHER ORDER, DIRECTION, WRIT, WHICH THIS HON'BLE COURT MAY DEEM FIT AND PROPER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE IN HAND.

RESPECTFULLY SHOWETH:

1. That the Petitioner Estate Officer HUDA, Gurgaon is an officer under the Haryana Urban Development Authority, which has been constituted under the HUDA, Act, 1977 and is aggrieved by passing of impugned award (Annexure P/12), Estate Officer is competent to invoke the extra ordinary writ jurisdiction vested in this Hon'ble High Court under Articles 226/227 of the Constitution of India.

2. That the brief facts of the case that the respondent/workman was appointed on 21.06.1996 as Assistant Accountant on a consolidated salary of Rs. 2200/- P.M. on contract basis. Copy of engagement letter dated 21.06.1996, which was exhibited before the tribunal as Ex W-1/A is annexed herewith as **Annexure P/1**. In acceptance of engagement letter the respondent-workman submitted his joining report and started working under the petitioner with effect from 24-6-96. True translated copy of the joining letter dated 24-6-96 is annexed herewith as **Annexure P/2**. From



MAHESH WADHAWA
 Special Stamp Vendor
 Punjab & Haryana High Court,
 CHANDIGARH
 I Certified that Stamp Paper
 worth Rs. 50/- is not available

CWP No. 6858 of 2008

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

3-71
ATTESTED
AT
Examiners/Judicial Department
High Court of Punjab & Haryana
Chandigarh

CWP No. 6858 of 2008
Date of Decision: 31.10.2008

Estate Officer, HUDA, Bhiwani

.. Petitioner

Versus

Suresh Kumar Sharma and another

...Respondents

CORAM: HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MR.JUSTICE VINOD KUMAR SHARMA

Present:- Mr. D.K. Nagar, Advocate for the petitioner.
Mr. Tajender Joshi, Advocate for respondent No.1

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

The challenge in the present writ petition is to the order (Annexure P12) dated 26.09.2007, whereby respondent-workman has been ordered to be reinstated with continuity of service alongwith 50% back wages from the date of demand notice i.e. 28.02.2001.

The respondent-workman raised an industrial dispute arising out of alleged termination of his service on 18.02.1997. It is the case of the respondent-workman that he was engaged in the month of June, 1996, as Assistant Accountant on a consolidated salary of Rs.2200/- per month on contract basis. It is alleged that he was appointed against a regular post and his work and conduct was satisfactory but the Management terminated his services on 18.02.1997 without any notice and no notice pay or

PUNJAB & HARYANA HIGH COURT

CWP No. 6858 of 2008

retrenchment compensation was paid to him and in this Management has contravened the provisions of Section 25-F of Industrial Disputes Act, 1947.

The learned Labour Court answered the Reference in favour of the workman after holding that the services of the workman have been terminated illegally and, therefore, he is entitled to be reinstated on his previous post and 50% back wages from 28.02.2001. On the basis of the said finding, the learned Labour Court passed the impugned award.

Learned counsel for the petitioner 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 **Mahboob Deepak vs. Nagar Panchayat, Gajraula, (2008) 1 SCC 575**, 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 vs. Om Parkash and another, decided on 26.07.2007** 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.

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 ATTESTED
 Examiner Judicial Department
 High Court of Punjab & Haryana
 Chandigarh

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Examiner Judicial Department
High Court of Punjab & Haryana
Chandigarh

CWP No. 6858 of 2008

18587 of 2004 Tek hand vs. The Presiding Officer and others, decided on 20.07.2007, wherein after referring to the judgments of the Hon'ble Supreme Court in SM Nilajkar and others vs. Telecom District Manager, Karnataka 2003 (4) SCC 27 and Municipal Council, Samrala vs. Raj Kumar, 2006(3) SCC 81, it was observed that termination 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 vs. State of Bihar, AIR 1997 SC 3567, Reserve Bank of India vs. Gopinath Sharma, 2006(6) SCC 221 and Gangadhar Pillai vs. 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".

In **The Executive Engineer, PWD B& R Provincial Division, Fatehabad vs. Bhajan Singh and another, CWP No. 2270 of 2007** decided on 12.09.2007, 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 vs. Raj Kumar (2006) 3 SCC 81, Himanshi Kumar Vidyarthi vs. State of Bihar, AIR 1997 SC 3657, Gangadhar Pillai vs. Siemens Ltd. (2007) 1 SCC 533, State of M.P. and others vs. 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".

In **Sector Superintendent-1, Government Livestock Farm, Hisar vs. Om Parkash, CWP No. 2396 of 2006** decided on 14.11.2007

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Punjab & Haryana High Court
Chandigarh

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 vs. Raj Kumar, (2006) 3 SCC 81, Gangadhar Pillai vs. Siemens Limited, (2007) 1 SCC 533, Indian Drugs and Pharmaceuticals Limited vs. Workmen, (2007) 1 SCC 408, Reserve Bank of India vs. Gopinath Sharma and another, (2006) 6 SCC 221 and UP Power Corporation Limited and another vs. 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”.

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

In view of the above, we are of the opinion that the award of the Labour Court granting reinstatement with continuity in service is not sustainable as the workman was appointed de hors the rules of appointment. Consequently, the impugned award dated 26.09.2007, Annexure P-12, is set aside.

Sd/- Hemant Gupta
Judge

Sd/- Vinod Kumar Sharma
Judge

True Copy

Certified to be true Copy
Examiner

Examiner Judicial Department
High Court of Punjab & Haryana
Chandigarh

October 31, 2008

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