IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO.19315 OF 2011

RESERVED ON: NOVEMBER 27, 2014

DATE OF DECISION: JANUARY 06, 2015

Anita Puri .....Petitioner

Versus

Industrial Tribunal & Labour Court, Union Territory Chandigarh and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.B.B.Bagga, Advocate for the petitioner.

Mr.Santosh Sharma, Advocate for respondents 2 and 3.

<><><>

TEJINDER SINGH DHINDSA, J.

The instant petition is directed against the award dated 14.7.2011, Annexure P11, passed by the Industrial Tribunal-cum-Labour Court, U.T., Chandigarh whereby the reference has been answered in terms of awarding a lump sum compensation of ₹90,000/- to the petitioner.

2. Learned counsel appearing for the petitioner would submit that the work-lady/present petitioner had been engaged by the Management of the respondent – Shri Guru Harkishan Model School as Clerk w.e.f. 1.11.1995 and had continued to serve till 10.1.2005 when her services were terminated in derogation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'). It has been argued that all through her service tenure, the petitioner had worked

diligently and to the satisfaction of her superiors and in token thereof had even earned appreciation letters. It is further contended that the Management was pressurizing the petitioner to resign so as to accommodate some other favourite and as such, her services were terminated with a malafide intention by setting up a false plea of abolition of the post. It has been argued that apart from discharging the duties of collection of school charges from the students, the petitioner was also working in the respondent-School and looking after the work pertaining to stationery, books and uniforms of the students and as such, even if the work relating to collection of school charges had been out-sourced to a Bank, still it would not be construed that the post the petitioner was holding stood abolished. Contended that such plea of abolition was a sham. Learned counsel has also asserted that the appointment letter dated 1.11.1995, Exhibit W2, as also copy of resolution of meeting of the Executive Committee of the Management allegedly held on 6.11.2004, Exhibit W3, in pursuance to which the services of the petitioner were terminated are fabricated documents and were just an after-thought. Learned counsel has also argued that a finding having been returned by the Labour Court as regards non-compliance of Section 25 of the Act, relief of reinstatement was a necessary consequence, particularly, keeping in view the length of service that the petitioner had rendered.

3. Per contra, learned counsel appearing for the respondent-Management has submitted that a meeting of the Executive Committee of the Management was held on 6.11.2004

and a decision was taken to abolish two posts of office Clerks and consequent to which, the services of the petitioner were dispensed with on 10.1.2005. It has been argued on behalf of the Management that dispensing of the services of the petitioner was not by way of punishment, but only on account of a situation whereby the work and duty discharged by the petitioner as also another employee, namely, Shashi having been out-sourced to different agencies. It has further been stated that no other employee has been appointed after the petitioner was relieved from service consequent upon abolition of the post as there was no requirement for any other employee to work in her place.

4. Learned counsel for the parties have been heard at length and the pleadings on record have been perused.

5. It is not in dispute that the petitioner had worked as a non-teaching staff of the School i.e. on the post of Clerk from 1.11.1995 till 10.1.2005. Claim of the petitioner is that she had been pressurized to resign so as to accommodate some other employee and it is towards such ulterior design that the Management had terminated her services. To the contrary, the Management took stand as regards abolition of post in question. Before the Labour Court, evidence had been adduced in the shape of Exhibits M1, M2, M3, M4 and M5 which reflected that the petitioner had made certain entries in the stationery and uniform registers relating to the years 2002 to 2005. Such evidence, undoubtedly, lends certain amount of credence to the contention raised by the learned counsel that apart from doing the main work of collection of school charges while holding the post of

Clerk, the petitioner was also discharging additional duties relating to the work of stationery, books and uniforms of the school children. Be that as it may, the testimony of Management witness Harmit Singh, Teacher, MW1, would be crucial who had deposed that the work of school charging collection had been out-sourced to Syndicate Bank in March 2004, stationery work was out-sourced to M/s Mukesh Paper Convertors, arrangement of books to students was out-sourced to M/s Madan Book Shop, Chandigarh and even the work as regards uniforms to the students had been assigned to M/s Rachit Garments, Sector 37, Chandigarh. Exhibit W3 is the copy of resolution of a meeting of the Executive Committee of the Management of the respondent-School of 6.11.2004 wherein a decision was taken to abolish two posts of office Clerks with immediate effect.

6. The Labour Court has accepted the plea of the Management as regards abolition of the post of Clerk, that the petitioner was holding, on account of out-sourcing of work to be bonafide. Such finding is based on valid and cogent reasoning and upon due appreciation of evidence adduced on record. The same would not call for any interference by this Court in exercise of its supervisory jurisdiction.

7. As far as non-compliance of Section 25-F of the Act is concerned, the Labour Court has noticed that along with the order dispensing with the services of the petitioner, a cheque dated 10.1.2005 for ₹4,560/- towards one month gross salary in lieu of notice period was also furnished. However, copy of the cheque which was exhibited as WX reflected amount in words as ₹4,650/-

and amount in figure as ₹4,560/-. Management witness MW1 in his deposition admitted that it was a clerical error and an amount of ₹4,600/- including interest for the delayed period was deposited in the account of the petitioner on 16.2.2005. The finding as regards non-compliance of Section 25-F of the Act has even otherwise not been assailed by the Management. This Court would proceed by taking such finding to be well-founded.

8. The only issue that remains for consideration is as to whether the petitioner was entitled to the relief of reinstatement.

9. It is by now well settled that termination of a workman having been found in contravention of Section 25-F of the Act would not entail automatic reinstatement. While considering the plea of reinstatement, various aspects such as nature of appointment, availability of post, availability of work, initial appointment being as per Rules/statutory provisions, length of service and delay, if any, in raising the industrial dispute would have to be kept in mind. Reference in this regard may be made to a recent Full Bench decision of this Court in LPA No.754 of 2010, titled as "*Municipal Council, Dina Nagar, Tehsil & Distt., Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur and another*", decided on 10.10.2014.

10. Even though the petitioner had served for a period of almost ten years as a non-teaching staff, but such appointment and service tenure was in the capacity of a temporary employee. Copy of the appointment letter dated 1.11.1995, Exhibit W2, also indicates that the appointment of the petitioner was purely temporary and she was to continue to remain and serve as a

temporary employee unless “expressly” made permanent and her services were liable to be terminated at any time. Even though such document was alleged to be fabricated, yet the petitioner had failed to produce the copy of any other appointment letter that may have been issued to her by the Management so as to contradict the document at Exhibit W2. The plea of the Management as regards abolition of post having been upheld and there being no availability of work, the petitioner could not be foisted back on the Management. The Labour Court has rightfully exercised the discretion in denying to the petitioner relief of reinstatement and resorting to award of compensation.

11. However, this Court is of the considered view that the amount of lump sum compensation of ₹90,000/- quantified by the Labour Court is on the lower side. Concededly, the petitioner had served from 1.11.1995 till 10.1.2005. In my view, the ends of justice would be sub-served upon compensation of ₹2 lacs being awarded in favour of the petitioner. Ordered accordingly. Such enhanced amount of compensation of ₹2 lacs be released to the petitioner within a period of eight weeks from today, failing which the same will carry interest @ 8% per annum.

12. But for such modification in the impugned award dated 14.7.2011, Annexure P11, to the extent of enhancement of compensation from ₹90,000/- to ₹2 lacs, the award is affirmed and the writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

JANUARY 06, 2015
SRM

Note: Whether to be referred to Reporter? Yes/No

For Subsequent orders see LPA-458-2015 Decided by HON'BLE MR. JUSTICE MAHESH GROVER; HON'BLE MR. JUSTICE SUDIP AHLUWALIA