

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12921 of 2018 (O&M)
Date of Decision:6.2.2019

The Barsat Cooperative Agricultural Service Society Ltd.
... Petitioner

Versus

Presiding Officer Industrial Tribunal, Patiala and another
... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms.Sushma Chopra, Advocate for the petitioner

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to the award dated 18.1.2018 passed by this Presiding Officer, Industrial Tribunal, Patiala whereby the workman has been reinstated with continuity of service, but without back-wages, as per terms and conditions of the resolution dated 24.2.1999.
2. The 2nd respondent-workman has been working in the petitioner-Society as a Sewadar since 24.2.1999. It is argued that the award suffers from illegality due to misapplication of the judgments of the Supreme Court in cases titled as *Anoop Sharma vs. Executived Engineer Public Health Division No.1, Panipat (Haryana)*, 2010 (3) SCT 319 and *Director of Horticulture and another vs. H.A.Kumar*, 2013 LLR 1162. It is argued that the workman is only a daily wager who was paid ₹ 30 per day and is not entitled to continuity of service leaving aside reinstatement. The dispute was not maintainable since the workman was working in the petitioner-Barsat Cooperative Agricultural Service Society Ltd which service is governed by the Punjab Cooperative Societies Act, 1961 and the rules framed thereunder in 1963. The contention is that the workman was not required to be served with a charge-sheet in the face of the resolution dated 23.9.2009 by which his services were dispensed

with. The effect of this resolution has not been properly understood by the Labour Tribunal. This resolution passed after 10 years of service says that the initial appointment was not legal and in accordance with rules. Resolution was preceded by a show-cause notice dated 13.8.2009. The reply to the show-cause notice was not found satisfactory as the workman was unable to produce any strong proof to justify his continuance in service. Accordingly, it was unanimously resolved by the Society that his services as Sewadar should be dispensed with. It is this resolution which led to the dispute and has resulted in reference to the Tribunal.

3. It is not a disputed fact that the petitioner-Society is an industry and the dispute between the parties was an industrial dispute. The 2nd respondent was a 'workman' by definition and compliance of the provisions of Industrial Disputes Act, 1947 (for short "the Act") was not done at the time of termination of his services, although he had completed 240 days of service in the relevant calendar year. The Labour Court has recorded a finding that Section 25-F of the Act was violated and as such the workman is entitled to reinstatement with continuity of service on the same terms and conditions as stipulated in the resolution dated 24.2.1999. The Labour Court read the testimony of MW1 Gurmail Singh, Secretary of the petitioner-Society who deposed in his cross-examination that he cannot produce any rule to show that any rule was violated while making appointment of the workman on daily wage basis in 1999. He admitted that the resolution dated 24.2.1999 (Ex.M1) bears the signatures of Sadhu Singh, Inspector at Mark-A who had attended the meeting on 24.2.1999 as representative of the Cooperative Department. He also admitted that there were certain audit objections raised for which Kishan Singh, the workman was issued a show-cause notice on 13.8.2009 proposing to terminate his service. He also admitted that as per

5. In view of the above, I find no merit in this writ petition which is accordingly dismissed. However, it is made clear that this order will not preclude the 2nd respondent/workman from availing his remedies against the award denying back-wages. In case such a challenge is brought, needless to say, it will be decided on merits as no opinion is expressed on the point.

No