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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA**

ON THE 3rd OF APRIL, 2024

MISC. PETITION No. 570 of 2021

BETWEEN:-

**MAHARISHI PANINI SANSKRIT EVAM VEDIC
UNIVERSITY THROUGH REGISTRAR ADD MAHARISHI
PANINI SANSKRIT AND VEDIC VISVA VIDHAYALA
DEWAS ROAD, UJJAIN (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI YASH TIWARI ADVOCATE)

AND

**KUMARI RAJANI VERMA D/O RAM GOPAL VERMA,
[REDACTED]**

.....RESPONDENT

(BY SHRI MAHESH KUMAR CHOUDHARY ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

The petitioner has preferred this petition being aggrieved by the impugned order dated 17.2.2020 passed by Presiding Officer Labour Court Ujjain in case No. 22/2017/ID Act whereby the learned Labour court has reinstated the respondent in service with 50% back-wages.

2/ The respondent raised an industrial dispute before the Labour Court Ujjain under Section 10 of Industrial Disputes Act seeking her reinstatement on her previous post being a preferential candidate and also providing her salary from the date of her removal as she was unemployed due to unlawful order

issued by petitioner. The petitioner on realizing that respondent is passing information to others without taking permission from the competent authority, has terminated her services for gross and wrongful misconduct vide order No. 621 on 10.8.2016. The Labour court after hearing both the parties vide impugned award dated 17.2.2020 has directed reinstatement of respondent with 50% back-wages from the date of her removal from service. Being aggrieved by the impugned award the petitioner has preferred this petition.

3/ Learned counsel for petitioner submits that the respondent was posted as daily wager since 4.3.2013. Since the work of respondent was not found satisfactory, and due to regular misconduct oral warning was issued. But her behaviour remained same. Thereafter her services have been terminated on 10.8.2016 after giving due notice and advance salary of one month to her. All these aspects were not considered by Labour court. The impugned award passed by Labour court is illegal, arbitrary and not sustainable in the eyes of law. In support of his submission, learned counsel has placed reliance upon judgment of Hon'ble Apex court in the matter of **Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh reported in AIR 2007 SC 2733**. Hence the impugned award be set aside.

4/ Per contra learned counsel for respondent opposes the petition by submitting that Labour court after considering the material evidence available on record has passed the impugned award which does not warrant any interference.

5/ Heard learned counsel for the parties and perused the record.

6/ The first question for consideration before this court is whether the respondent has worked in the establishment of petitioner for more than 240 days in a year.

7/ In the instant case, petitioner himself admits in his petition that respondent was posted as daily-wager on 4.3.2013 and she remained in service till 10.8.2016 therefore, it is proved that respondent was employed with the employer since 2013 and worked for more than 240 days in a year.

8/ The second contention raised by petitioner is that respondent was terminated by petitioner for gross and wrongful misconduct. The oral warning was issued against her and after giving notice under circular No. 12(9) and on payment of one month advance salary, her services have been terminated on 10.8.2016. Therefore, an employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two and reinstated cannot be ordered in the circumstances of the case.

9/ From perusal of the award passed by Labour court it appears that services of respondent have been terminated by petitioner on the basis that work was not found satisfactory and she has committed gross and wrongful misconduct. The respondent was not permanent employee, therefore, there is no requirement for conducting any disciplinary action against her.

10/ It is also noteworthy that petitioner is an educational institution. It cannot be considered as an industry and in respect of service condition of respondent, MP University Act, Rules and other circulars are applicable.

11/ The Hon'ble Apex court in case of **Madhyamik Shiksha Parishad Vs. Anil Kumar Mishra reported in (2005) 5 SCC 122** has held that completion of 240 days work does not import right to regularize under Industrial Act. It merely imposes certain obligations on the employer at the time of termination of service. This citation is completely applicable in the instant case. The same citation has been followed by Hon'ble Apex court in case of

Hindustan Aeronautics Ltd. (supra).

12/ The Coordinate Bench of this court in the matter of **Sunil Kumar Vs. MP Road Transport Corporation Bairagarh reported in 1980 JJJ 561** it has been held as under:-

"The management did not give any charge sheet to the petitioner. The orders of termination did not refer to any misconduct and no stigma was cast on the petitioners. In these circumstances, we are of the opinion that orders of termination were not founded on misconduct but amounted to discharge simpliciter of the petitioners under Standing Order 11(b) for unsatisfactory work and loss of confidence."

13. In view of the aforesaid, this court is of the considered opinion that learned labour court has not duly considered all these aspects. The work of respondent was not found satisfactory and she has lost confidence of her employer, therefore after giving due notice under provisions contained in Circular No. 12(9), the services of respondent have been terminated by the order dated 9.8.2016, which appears to be just and proper. Therefore, the impugned award passed by the Learned Labour court is bad in law and deserves to be set aside.

14/ Accordingly this petition is allowed and the impugned award dated 17.2.2020 is hereby set aside.

(ANIL VERMA)
JUDGE

BDJ