

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPSS No.1720 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Pankaj Miglani, Advocate, for the petitioner. Mr. Sachin Mohan Singh Mehta, Standing Counsel, for the State of Uttarakhand/respondents. The brief facts of the case are that the petitioner worked with the respondent as a muster role employee, and he worked in the said capacity till his services were dispensed on the ground that he was found to be engaged in commission of the criminal offence, for which he was placed behind the bars and later on was released on bail on 27.07.1998, and after being released on bail when he presented himself to be reappointed, his services were dispensed with. The action of the respondent of dispensation of the services of the petitioner were put to challenge by the petitioner by seeking reference under section 4-K of the Industrial Disputes Act, and ultimately the reference was made to be decided by the learned Labour Court, which stood adjudicated by an award rendered in Adjudication Case No.66 of 2015, "Sri Satyapal Vs. M/s Irrigation Research Institution, Roorkee". The learned Labour Court ultimately had passed an award

			on 15.09.2016, to the following effect:- “14. अतः उपरोक्त साक्ष्य एवं परिस्थितियों को देखते हुए यह स्पष्ट है कि विपक्षी / सेवायोजक द्वारा श्रमिक श्री सत्यपाल पुत्र श्री साधूराम बेलदार की सेवायें दिनांक 05.01.1998 से समाप्त किया जाना पूरी तरह अवैधानिक एवं प्राकृतिक न्याय के सिद्धान्त के विरुद्ध है। तदनुसार सन्दर्भदेश वादी / श्रमिक के पक्ष में एवं विपक्षी / सेवायोजक के विरुद्ध इस आदेश के साथ पारित करते हुए विपक्षी / सेवायोजक को आदेशित किया जाता है कि विपक्षी / सेवायोजक प्रस्तुत एवार्ड के प्रकाशित होने की तिथि से अन्दर 60 दिन में वादी / श्रमिक को पुनः मस्टरोल / संविदा अथवा समान्तर) पद पर नियुक्त करें अन्यथा वादी श्रमिक अपने जेल से रिहा होने के बाद आवेदन प्रार्थना पत्र की तिथि 06.08.1998 से समान्तर पद पर पुनर्नियुक्ति तक अथवा सेवा निवृत्ति की तिथि, जो भी पहले हो, तक प्रतिमाह की दर से विपक्षी / सेवायोजक से ₹5,000.00 (पाँच) हजार मात्र) जीविकोपार्जन धनराशि प्राप्त करने का अधिकारी होगा। तदनुसार एवार्ड सकारात्मक रूप से वादी / श्रमिक श्री सत्यपाल पुत्र श्री साधूराम के पक्ष पारित किया जाता है। एवार्ड श्रम आयुक्त, उत्तराखण्ड, हल्द्वारी को प्रकाशन हेतु नियमानुसार प्रेषित किया जाय। बाद प्रकाशन पत्रावली नियमानुसार अभिलेखागार दाखिल हो।” The learned Labour Court has held that the dispensation of the services of the petitioner as Beldar on 05.01.1998, was found to be illegal and in violation of the principle of natural justice, and as such, the direction was issued that within 60 days from the date of the publication of the award, the petitioner was directed to be “reappointed as a muster role
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			employee, on an equivalent post”. It is this clause, which has been interpreted by the learned counsel for the petitioner, as if the direction issued to be reappointed within 60 days on an “equivalent post”, would be read as to be a “reinstatement”, and if that be the situation, he would revive back his position as it was persisting on the date of his removal i.e. on 05.01.1998. The same has been answered to the contrary by the learned Standing Counsel, that the learned Labour Court award, which admittedly, was unchallenged by any of the parties to the writ petition. He submits that the direction given by the Labour Court was to “reappoint” him on an equivalent post. He submits that the two nomenclatures used in the award and the inference drawn by the award to reappoint as a muster role employee, on the same post would mean that it was a “fresh appointment”, and since there was a break in the services from 05.01.1998 to 15.09.2016, the petitioner would not be falling to be considered for regularization as per the Rules of 2011. This was the view taken in the impugned order, which is under challenge in the writ petition, that in the absence of there being a lack of the continuity being provided to the services of the petitioner in the impugned award, since it was directed to be a fresh
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			appointment, he would be falling to be outside the ambit of the Rules of 2011, to be considered for regularization, and as such, the reason which has been assigned, if it is read in consonance with the award itself, the interpretation as given by the petitioner to the impugned award may not be sustainable, because once the Labour Court has used the word “Punha Muster Role/Savindha athva Samantar pad par niyukat karein”. The two words Punha and the “appointment” used in the award means it was a reappointment and not a reinstatement as argued by the learned counsel for the petitioner. Since it being an appointment made in pursuance to the award dated 15.09.2016, the petitioner will not fall to be within the purview of the Regularization Rules of 2011, as there was no continuity in appointment. Hence, the denial to consider the claim of the petitioner for regularization was rightly denied by the Executive Engineer, which doesn’t call for any interference by the Court in the exercise of inherent jurisdiction under Article 226 of the Constitution of India. Thus, the writ petition stand dismissed. (Sharad Kumar Sharma, J.) 14.09.2023 NR
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