

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

CWP No.11780 of 1993

Date of Decision: 4.2.2015

Harbhajan Singh

..... Petitioner

Versus

Presiding Officer, Labour Court and others

..... Respondents

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

Present:None for the petitioner

Mr.APS Mann, Addl.A.G., Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

In this case, the period of service rendered by the petitioner-workman with the respondent-Management is between 18th January, 1989 to 31st May, 1990. The petitioner had worked as a daily wage worker and the record of employment was produced as Ex.M/1. It was the case of the respondent-Management that the workman did not turn up for duty after 31st May, 1990 as he absented himself. A suggestion put by the workman to the Management witness in the witness box shows that the workman had worked with the Management as daily rated worker from time to time. He specifically denied the suggestion put to him in his cross examination that the workman had worked from 18th January, 1989 to 31st May, 1990 continuously. Denial was thus with respect to continuity of service. The Labour Court has accepted as a matter of fact that the workman did not turn up for duty after 31st May, 1990 on his own. It is not the business of the writ court in exercise of its supervisory jurisdiction under Articles 226/227 of the Constitution to disturb the findings of fact arrived

based on misappreciation of evidence. It is for the Labour Court to judge the weight of evidence. The period of service is to be proved by the workman to support the claim for reinstatement with back-wages. At best the petitioner would be entitled to compensation because the witness of the Management asserted in his deposition that the workman absented from duty which is in recognition of the fact that the workman did in fact render service, and therefore, the suggestion put to the Management Witness could not be read against the workman and to that extent, I would interfere with the award and its findings to this extent. Therefore, it would have to be assumed that the petitioner had worked for 240 days in the 12 preceding calendar months from the date of termination and the mandate of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”) was violated which is a pre-condition to valid retrenchment, even though the intention of the workman may never have been to turn up for work, but still it amounted to “retrenchment” within the meaning of Section 2 (oo) of the Act. Keeping in view the period of service rendered between the two dates, which comes to one year and 4 months, the Management is directed to compensate the petitioner with Rs.1.00 lac as compensation in lieu of reinstatement following a Division Bench decision of this Court in **Municipal Council, Dina Nagar, Tehsil and Distt. Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** decided on 29th November, 2014 (LPA No.754 of 2010 and 9 connected LPAs) wherein a sum of Rs.1.00 lac per year has been awarded for services rendered by peons who had been retrenched from municipal service in violation of the mandates of Section 25 F of the Act.

Consequently, this petition is partly allowed. The award of the Labour Court dated 12th May, 1993 is upheld to the extent indicated above.

Reinstatement is denied for the reasons recorded above. However, for violation

of mandatory provisions of Section 25 F of the Act, compensation of Rs.1.00 lac is awarded following the decision in **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur, *supra***. This order will remain executable before the Labour Court and it would also be the bounden duty of the State, after the period of appeal has expired, in relation to this order, to hand over the money to the petitioner after locating his whereabouts through the Sr.Superintendent of Police of the District where the petitioner last resided or was last known to reside.

The writ petition stands disposed of in the above terms.

A copy of this order be sent to the petitioner by the Office.

4.2.2015

MFK

**(RAJIV NARAIN RAINA)
JUDGE**