

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.16114 of 1992 O&M)

Date of Decision : 07.01.2015

Municipal Committee, Kaithal

....Petitioners

Versus

The Presiding Officer, Labour Court, Ambala and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment? Yes

2) To be referred to the Reporters or not? Yes

3) Whether the judgment should be reported in the Digest? Yes

Present : Mr.Rakesh Nagpal, Advocate for the petitioner
Ms. Meenakshi Verma, Addl. AG, Haryana

MAHESH GROVER, J.

The Municipal Committee, Kaithal has impugned the award dated 9.3.1992 of the Labour court by which the claim of the workman was accepted. He was directed to be reinstated in service alongwith back wages which were determined as Rs.7,000/-. The facts would indicate that the workman had put in almost 1 ½ years of service on daily wages basis. The Labour Court while answering the reference claimed by the petitioner observed that there was violation of Section 25 F of the Industrial Disputes Act. The petitioner – Municipal Committee had impugned the award but during the pendency of the petition, the State Government (Department of Health) took over some of the functions of the Municipal Committee, one of them being those of Assistant Tubewell Operators. This is an undisputed fact. Upon an application moved by the Municipal Committee, the State Government was directed to be impleaded as party respondent and directions were issued to comply with the provisions of Section 17 B of the

Industrial Disputes Act when an application in this regard was moved.

Today when the matter was taken up the Court has been apprised that the orders of this Court regarding compliance of the provisions of Section 17 B of the Act stand satisfied. A photocopy of the receipt showing payment of Rs.1,35,200/- to the workman has been placed on record. At the same time, learned counsel for the State has apprised this Court on instructions from Sh. Vijay Singh, Executive Engineer that the workman never reported for duty even for a single day after passing of the award and during the subsistence of these proceedings. It may be noticed that the workman has stated in his demand notice that his period of engagement with the Municipal Committee began in the year 1985 and was merely for 1 ½ years approximately.

There is no representation on behalf of the workman. This Court has thus evaluated the material on record and would conclude that the Labour Court was certainly in error in ordering automatic reinstatement alongwith back wages which indeed were tagged down to Rs.7,000/-.

It is a settled proposition of law that automatic reinstatement is not a course to be adopted and the Labour Court is obliged to take into consideration certain other materials to assess and grant the relief to a workman.

In Senior Superintendent Telegraph (Traffic) Bhopal) v. Santosh Kumar Seal and others 2010(6) SCC 773, the Hon'ble Supreme Court observed as follows :-

“ 7. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of **Jagbir Singh vs. Haryana State Agriculture Marketing Board and Anr.** 2009(3) SCT

790: 2009(5) RAJ 153: (2009) 15 SCC 327, the aforesaid decisions were noticed and it was stated:

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

.....

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wage who does not hold a post and a permanent employee.”

8. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.”

Our own High Court in case titled as Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs Presiding Officer, Labour Court, Gurdaspur and another reported as 2014 (4) SCT 514 while discussing the case of Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd., 2014 (3) SCT 661 laid down the following principles:-

(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to

the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were

not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement”

This Court is also constrained to note that the workman never reported for duty and at this stage of the proceedings when the dispute started more than 3 decades back and this petition has remained pending since 1992 coupled with the fact that the workman never reported for duty, the instant petition and the cause espoused therein, both on behalf of the petitioner and the workman has largely outlived its justiciability.

Since the workman never reported for duty and has yet got an amount of Rs.1,35,200/- pursuant to the proceedings under Section 17-B of the Industrial Disputes Act, I am of the view that no further orders need to be passed in this regard. The workman stands adequately compensated and as noticed above with the efflux of time, the instant petition has been largely robbed of any justifiable cause that can be answered today, particularly, when the workman never reported for duty.

Disposed of.

January 07, 2015
rekha

(MAHESH GROVER)
JUDGE