

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

CWP No.12366 of 1995

Date of decision: 14.12.2015

Lakhbir Singh

... Petitioner

Versus

Presiding Officer, Labour Court, U.T.
Chandigarh & anr.

... Respondents

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

Present: Mr. KL Arora, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Additional Standing Counsel
for U.T., Chandigarh.

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

RAJIV NARAIN RAINA, J.(Oral)

Having considered all the aspects of the case with the assistance of both the learned counsel and after perusing the record, there appears to be hardly any doubt that Mr. Arora is correct in his submission that the petitioner was deprived of his right maturing at 240 days to secure to him his industrial rights under the Industrial Disputes Act, 1947. The termination, in all probability, was occasioned by a decision 'written or unwritten', not to let the petitioner complete 240 days of service. He cites the decision of this Court in **The Gurdaspur Central Co-operative Bank Limited v. The Presiding Officer, Labour Court, Gurdaspur & ors.**, 1991(1) SLR 209; **The Kapurthala Central Co-operative Bank Ltd., Kapurthala v. The Presiding Officer, Labour Court, Jullundhur and others**, 1984(1) SLR 435 and the decision of the

Supreme Court in **The Ferozepur Central Cooperative Bank Ltd. v. The Presiding Officer, Labour Court and anr.**, 1985(2) SLR 437, **Central Bank of India v. S. Satyam & ors.**, 1996(4) SCT 143; **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, (2010) 5 Supreme Court Cases 497, and **Devinder Singh vs. Municipal Council, Sanaur**, (2011) 6 SCC 584; to plead that the writ petitioner was unfairly dealt with and was deprived of his industrial rights by an unfair labour practice and this action of the respondents is criticized.

However, the question remains as to what relief is to be granted to the petitioner. This petition has been pending since 1995 which a quite a distance of time to come to grips with relief. Mr. Arora submits that the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for brevity 'the ID Act') were violated. In hindsight there is no clear vision and relief is a dilemma.

On facts, it may be noticed that the petitioner was appointed to a Class IV post of Ward Servant-cum-Chowkidar on daily wage basis by an order of the Director Health Services, Chandigarh Administration, Chandigarh. The petitioner worked for three spells; twice for 89 days and one for 60 days. The admitted position is that he worked on both Saturdays and Sundays which was in line with the nature of the job.

The workman filed CWP No.11446 of 1990 claiming regularization of services and a status quo order was granted by this Court with respect to his anticipated termination, till such time, the U.T. Administration took a decision whether the services of the workman

could be regularized or not. As a result of the demand for regularization, the services of the petitioner were terminated by an order in writing.

Aggrieved by this order refusing regularization and at the same time terminating his services, the petitioner raised an industrial dispute with the management which was referred to the Labour Court on failure to arrive at a settlement during the conciliation proceedings. The Labour Court has dismissed the reference by the impugned award dated August 5, 1994 holding that the case falls under Section 2(oo)(bb) of the ID Act, since the employment was not extended beyond August 25, 1990. The Labour Court took a view that on August 25, 1990, the petitioner had not completed 240 days of service in the manner provided by Section 25-B of the Act. On due consideration of the reasons given by the Labour Court on both the issues, this Court is of opinion that the finding on both the points is incorrect. When extensions are granted beyond the first spell, what has to be seen is the terms of the appointment and whether they contain a stipulation of non-renewal of contract on expiration of the fixed duration of service. With the grant of first and second extension, the presumption arises that the case does not fall under the exception sub clause (bb) of Section 2(oo) of the ID Act and therefore, the necessity of complying with Section 25-F of the ID Act arises. When both these issues have not been correctly decided, then the further question arises as to what relief the petitioner is entitled to and would he have a right to reinstatement with continuity of service and full back wages.

Having regard the totality of circumstances, the nature of the initial appointment, the passage of time given that the post is public

covered by rules required to be filled in consonance with the mandates in Articles 14 & 16 of the Constitution of India and the fact that this matter was admitted on August 24, 1995 with an interim order, I do not think that reinstatement can be awarded in this case. In the matter of relief, the Supreme Court has guarded that breach of provisions of Section 2-5F of the ID Act, do not automatically lead to reinstatement and taking into account many factors in sum total as are presented on facts then the ends of justice will be met in moulding the relief to the facts and circumstances of the case. Therefore, this matter can be disposed of more appropriately, in awarding compensation in lieu of reinstatement. The period of service is too brief to ignite the wick of reinstatement. There is also no clear and categorical evidence pointing case toward protections in Sections 25-G and 25-H of the ID Act and even if they are that would not make any material difference on the question of reinstatement. Instead, it would be safer to apply the compensation principle in the Division Bench decision of this Court in **Municipal Council, Dina Nagar v. Presiding Officer, Labour Court, Gurdaspur**, 2015 (1) RSJ 765 awarding compensation of Rs.1.25 lac for every completed year of service in lieu of reinstatement in the case of clerks and Rs 1 lac for retrenched peons. I see no reason why the same principle should not be applied to this case and compensation of Rs.1.25 lac be granted to the workman in lieu of reinstatement by broadly approximating a Ward Servant/ Chowkidar a notch above peons to award the higher amount in *Dina Nagar* case. Since the petitioner has waited 25 years for the decision on merits and the fact that the termination was illegal, he would take costs of this petition assessed at Rs.25,000/- in

addition to compensation. The amount of compensation and costs assessed by this Court be paid to the workman by pay order/banker cheque within six weeks from the date of supply of certified copy of this order to the competent authority U.T. Administration. Consequently, the petition is partly allowed. The award of the Labour Court is modified accordingly.

(RAJIV NARAIN RAINA)
JUDGE

14.12.2015
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