

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No.15210 of 2001 (O&M)

Date of decision : July 8, 2015

The Superintendent, Govt.Garden and Nursery Kishanpura

..... Petitioners

Versus

Chet Ram and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Keshav Gupta, Advocate
for the petitioner.

Mr. R. N. Lohan, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
CM No. 6961 of 2015

The prayer in the application is for early hearing of the writ petition. The writ petition was admitted on 28.9.2001.

For the reasons stated in the application, application is allowed. The writ petition is taken on board.

CWP No.15210 of 2001

The challenge in the present writ petition is to the impugned award dated 1.6.2011 where reference raised by the workman qua his alleged termination on 7.1.1984, has been answered in his favour and he has been held entitled to reinstatement along with continuity of service and full back wages.

Mr. Keshav Gupta, AAG., Haryana submits that the workman was employed with the Management in the year 1982 as Mali. Though, his services were terminated on 7.1.1984, though no order of termination was passed, thus, it was a case of abandonment. The workman did not raise the demand notice for almost 14 years and woke up as late as on 18.2.1999 by raising a demand almost after a gap of 15 years. He further submits that there is no averment as to whether the workman was employed during the period of his termination or not, therefore, award ordering reinstatement, much less continuity of service with full back wages is not sustainable and the ratio decidendi culled out in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others (2013) 10 SCC 324** would be applicable as the workman is not entitled to reinstatement, much less any back wages. He further submits no reason, much less cogent reason has been assigned in sending the belated demand notice, though there was a specific objection taken in the written statement qua maintainability of the claim petition and the Labour Court has failed to adjudicate the same despite a specific issue i.e. issue No.2 has been framed in this

regard and thus submits that the award of the Labour Court is liable to be set aside, much less perverse and erroneous. In support of his contention, he relied upon the judgment in **Asstt.Engineer, CAD, Kota Vs. Dhan Kunwar 2006 (5) SCC 481.**

Mr. R. N. Lohan, learned counsel for the respondents submits that this Court while admitting the writ petition stayed the awarding of back wages but there was no stay with regard to reinstatement, accordingly the workman was reinstated on 24.12.2003 and now the workman has superannuated.

I have heard learned counsel for the parties and perused the paper book.

Since the workman had not specifically averred in the demand notice that he was not employed during the period he remained out of service. In view of the ratio decidendi culled out in **Deepali Gundu Surwase's case (supra)** the workman is not entitled to back wages and accordingly the award of the Labour Court awarding full back wages is hereby set aside.

The plea raised on behalf of of the State of Haryana qua continuity is not only attractive but plausible and has some logic, in as much as that since workman was reinstated, therefore, he would not be entitled to continuity in service, but not back wages.

Accordingly the award is modified. It is made clear that the workman shall not be entitled to continuity of service for the period he remained out of service w.e.f. 7.1.1984 till the service of the demand notice, however, shall be entitled to all the retiral benefits for the period he remained in service, if any.

With the aforementioned observations the writ
petition is disposed of.

(AMIT RAWAL)
JUDGE

July 8, 2015
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