

CM No.13712 of 2014 in/and
CWP No.15024 of 2004

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

**CM No.13712-CWP of 2014 in/and
CWP No.15024 of 2004**

Date of decision:24.04.2015

State of Haryana

...Petitioner

Versus

Shri Satish Kumar and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. J.S.Mannipur, Advocate,
for the applicant-respondent no.1.

Mr. J.S.Bedi, Addl. A.G., Haryana,
for the non-applicant/petitioner.

Rakesh Kumar Jain, J.

The aforesaid writ petition was admitted on 24.09.2004 and operation of the impugned award was stayed, subject to the provisions of Section 17-B of the Industrial Dispute Act, 1947 (hereinafter referred to as the "Act").

The applicant-respondent no.1 has filed the application bearing CM No.13712-CWP of 2014 for disposal of the present writ petition being covered by the law laid down by this Court in the case of **Punjab Police Housing Corporation Limited v. Labour Court and another**, 2011(2) RSJ 207. In this application, the applicant-respondent no.1 has suffered a

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statement that he is willing to forgo his back wages provided he is allowed to be continued in service as he was reinstated subject to the outcome of the present writ petition.

The brief facts are that respondent no.1-workman joined the petitioner as Junior Computer Programmer w.e.f. 02.02.1999 at a consolidated monthly salary of ₹2,500/-. He worked upto 21.10.1999 when his services were terminated without following the provisions of Section 25-F of the Act. After termination of his services, junior workman, namely, Vikas Wadhwa S/o Nanak Chand was appointed in violation of Section 25-G of the Act. The Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as the "Labour Court") has recorded a finding on issue no.1 that there is no dispute that respondent no.1 had worked during the period 02.02.1999 to 20.09.1999 though the petitioner had alleged that he had worked on contract basis during this period from 02.02.1999 to 01.05.1999, 04.05.1999 to 31.07.1999 and 01.08.1999 to 20.09.1999, for a total period of 229 days. It was held that respondent no.1 had worked for 229 days before the date on which his services were terminated abruptly, but without including the holidays i.e. Sundays, ordinary national holidays besides other national holidays, which, if counted, would complete more than 240 days. It was also observed that Vikas Wadhwa S/o Nanak Chand has been appointed in place of respondent no.1 and this fact has been admitted by Naresh Kumar MW-1 during his cross-examination. Thus, the Labour Court has observed that the termination of respondent no.1 was in violation of the provisions of Sections 25-F and 25-G of the Act and

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ordered for his reinstatement with continuity of service and full back wages from the date of demand notice dated 29.04.2003.

While the writ petition was pending, respondent no.1 filed the application bearing CM No.13712-CWP of 2014 in which it is averred that he has been reinstated on 08.02.2005 and has been continuously working and has now rendered more than 9 years of service. It is further averred that the only issue is with regard to his back wages for which he has already suffered a statement that he is ready to forego the same. It is further averred that service of Vikas Wadhwa S/o Nanak Chand, who was appointed on contract basis w.e.f. 21.09.1999 after termination of the services of respondent no.1, have been regularized vide order dated 12.07.2006.

While referring to a decision of this Court in **Punjab Police Housing Corporation Limited's case (supra)**, it is argued that retention of the juniors in service, after termination of the service of workman, is illegal. In this regard, the relevant portion of the said judgment is as under:

“7. That apart, the evidence led by the workman before the learned Labour Court clearly indicates that at least four junior Draftsmen were appointed subsequent to the workman, namely, Reeta Rani, Upkar Singh, Simpa Batra and Mandeep Pal were continued and the services of first three employees were regularized after termination of the services of the workman. From the said facts which have been proved by adducing evidence before the learned Labour Court, it clearly transpires that

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the provisions of Section 25-G of the Act laying down the principle of 'last come first go' have been violated by the management. The said facts would render discontinuation of the services of the workman bad in law and contrary to the provisions of the Industrial Disputes Act.

Consequently, in the light of the aforesaid discussion, we do not find any infirmity in the orders passed by the learned Single Judge. The Letters Patent Appeal, therefore, is dismissed. However, in the facts and circumstances of the case, we make no order as to costs.”

In reply to the application, it has been admitted by the petitioner that respondent no.1 was reinstated into service in compliance of the award of the Labour Court but his services were not regularized at the time when the services of his junior, namely, Vikash Wadhwa were regularized to the post of Clerk.

While deciding the application, the main writ petition is also taken up and the arguments of both the counsel for the parties are heard.

There is no dispute that in the case of **Kapurthala Central Cooperative Bank Ltd., Kapurthala v. The Presiding Officer, Labour Court, Jullundur and others**, 1984 LIC 974, this Court has held that termination of services of the workman at the stage when he is close to complete 240 days, with a view to deprive him of his rights under Chapter V

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of the Act, is an unfair labour practice.

The fact that respondent no.1 who is now in service of the petitioner from the last 10 years, may be under the orders of the Labour Court without any complaint, is sufficient to hold that the said post is required to be manned and the very fact that person junior to the petitioner has been retained in service proves that there is violation of Section 25-G of the Act.

Thus, in view of the totality of the facts and circumstances, narrated here-in-above, the application bearing CM No.13712-CWP of 2014 is hereby allowed and the main writ petition is hereby dismissed.

April 24, 2015
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(Rakesh Kumar Jain)
Judge