

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 12469 of 2010
Date of Decision: April 1, 2015

Smt. Kishan Wati

..... Petitioner

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court-I,
Faridabad and another**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anil Shukla, Advocate
for the petitioner.

Mr. Ajay Nara, Advocate
for respondent No.2.

AMIT RAWAL, J (ORAL)

This case is a classic case of hardship where the petitioner-workman on demise of her husband was given a compassionate appointment on 20.12.1999 and unfortunately her services were allegedly terminated on 30.11.2000. Thereafter the petitioner had approached the trial court and obtained status quo and owing to status quo order she continuously worked in the office of the respondent and her suit was dismissed. She completed 240 days in the relevant year. Thereafter the petitioner raised the demand notice and pursuance to the conciliation proceedings the matter was referred to the Labour Court but the Labour Court erroneously declined the claim of the workman on the premise that the workman had not completed 240 days in a relevant year.

I have heard learned counsel for the parties, appraised the impugned award.

This matter is pending adjudication in this Court since 2010 and twice there was an order whereby the respondent-Management-HUDA was called upon to seek instructions to adjust the petitioner at some other post keeping in view that she was given an appointment on compassionate grounds i.e.owing to untimely death of her husband. In the order dated 15.1.2013 this Court noticed not only the irony but adversity of the workman and this Court cannot remain oblivious of the fact that where the male member of the family has died the widow has not only sustain herself but her children as well. The Labour Court has also committed illegality and perversity in not noticing the fact that since the status quo order was granted on 14.2.2000 and it continued to remain in force till 30.11.2000 by that time the petitioner had completed 240 days in a relevant year.

In view of the aforementioned fact that the respondent-Management was required to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act'). There is no evidence which has come on record to indicate the compliance.

The Hon'ble Surpeme Court in **Jasmer Singh Vs. State of Haryana and another Civil Appeal No. 346 of 2015** decided on 13.1.2015 while noticing the ratio decidendi culled out in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others (2013) 10 SCC 324** has noticed that

termination order would be void ab initio in law for non-compliance of the provisions of Section 25-F clauses (a) and (b) and in view of the non-compliance the termination order is liable to be set aside.

In the instant case, since there is no such compliance, the termination of the petitioner is therefore held to be not in conformity with the provisions of Section 25-F of the Act.

Since there is no averment qua back wages, this Court is constrained not to award compensation in view of the principles culled out in **Deepali Gundu's case (supra)** wherein it has been categorically held that there has to be specific pleadings qua the workman being gainfully employed or not. Had there been pleadings, the onus would have shifted on the employer but the facts and circumstances of the present case do not give any cause for awarding back wages.

In view of the aforementioned observations the award of the Labour Court is set aside. The petitioner is entitled to be reinstated into service with continuity of service. There shall be no order qua the back wages.

Accordingly the writ petition is allowed.

(AMIT RAWAL)
JUDGE

April 1, 2015
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