

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

CWP No.11742 of 2012
Date of decision : 22.04.2015

Baldev Singh

...Petitioner

Versus

Presiding Officer and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present: Mr. K.S. Dhillon, Advocate
for the petitioner.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the award dated 11.01.2012 (Annexure P-4) passed by the Industrial Tribunal, Jalandhar, whereby reference has been decided against workman & instead of ordering reinstatement and continuity of service plus back wages, compensation of ₹7750/- has been awarded despite the fact that the petitioner has rendered the work as Helper for 5 ½ years.

In the aforementioned writ petition, notice of motion was issued and Mr. D.S. Bishnoi, Advocate had put in appearance on behalf of respondent Nos.2 and 3. On 19.12.2014 and even on the last date of

hearing, no one had appeared on behalf of respondent Nos.2 and 3, therefore, the present writ petition is decided in the absence of the counsel or any representative for respondent Nos.2 and 3.

Mr. K.S. Dhillon, learned counsel appearing on behalf of petitioner contends that in claim statement, the petitioner specifically alleged that he was appointed as Helper to the Electrician and not as Electrician and made specific averments that he was not gainfully employed for the period he remains out of service. While replying to the averments made in claim petition, the respondent in the written statement admitted that the petitioner was appointed as Helper to the Electrician but in paragraph No.4 came out with the plea that respondent in order to fill up the regular vacancy invited applications from the employee-workman and as well as from the outsiders and from Employment Exchange and regular interview was conducted but the petitioner did not avail the opportunity. It is on this premise that the Labour Court did not order for reinstatement and order for compensation.

I have heard learned counsel for the petitioner and appraise the paper book.

Labour Court has come to the categorical finding that service of the petitioner was not retrenched within the provision of Section 25 (f) of the Industrial Disputes Act, 1947. The point on which Labour Court, instead of ordering reinstatement and continuity of service has considered the plea taken by the respondent in paragraph No.4 of the

written statement.

For the sake of brevity, para No.4 of the written statement is extracted hereinbelow:-

"That the reference is illegal and invalid, as the respondent in order to fill the regular vacancies invited applications from the employee working in the school as well as from outsiders and from employment exchanges and held regular interview but the claimant did not avail of the opportunity and did not apply to the respondent for the regular job. Accordingly the claimant now cannot claim job from the respondent, when he himself did not come forward and apply the management for the job when the applications were invited. Accordingly the reference is liable to be dismissed on this ground."

Mr. K.S. Dhillon, Advocate for the petitioner during the course of argument has also pointed out and drawn the attention of this Court to Annexure P-5, affidavit submitted in Examination-in-Chief on account of evidence given by Mohanana Sugathan, i.e. witness of the Management, who unequivocally admitted that out of lot of four selected candidates, one was for the post of Electrician, two for the pump Operators-cum-Electrician, one Assistant Master Social Studies (Ad hoc) and even the minute sheet (Annexure P-6) has been placed on record to show that the management appointed only the aforementioned persons, thus, in essence there was no posts advertised for the Helper

and, therefore, the Labour Court has committed illegality and

perversity in arriving at a conclusion which is contrary to its record.

Since, the petitioner has worked more than 5½ years, he was entitled to continuity in service plus back wages as he has categorically averred in his affidavit that he was not gainfully employed.

Hon'ble Supreme Court in case Civil Appeal No.346 of 2015 titled as Jasmer Singh Vs. State of Haryana & another, decided on 13.01.2015 has held that onus to prove that the workman was gainfully employed is heavily upon the Management/Employer. In the present case, written statement has filed to discharge the onus.

Since, Labour Court has committed illegality in misreading the documentary evidence inasmuch as there was no posts advertised for recruiting any Helper and only Electrician, Pump Operators-Cum-Electrician, Assistant Master Social Study (Ad hoc) and, therefore, it cannot be presumed and believed that the petitioner unintentionally did not apply for such post as he was not eligible. It remains undisputed that the petitioner worked as Helper.

In view of the above, impugned award of the Labour Court is hereby set aside. Petitioner is entitled to reinstatement and continuity of service and full back wages.

Writ petition stands allowed.

22.04.2015

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**(AMIT RAWAL)
JUDGE**