

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

Civil Writ Petition No.17848 of 2011
Date of Decision: May 04, 2015

Director, Directorate of Wheat Research (ICAR), Karnal

...Petitioner

Versus

Naseeb Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Aman Chaudhary, Advocate,
for the petitioner.

Mr.Raman B. Garg, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The Management has approached this Court by challenging the award dated 26.10.2010 (Annexure P-9), whereby the reference has been answered in favour of the workman and he has been ordered to be reinstated into service with full back wages.

Mr.Aman Chaudhary, learned counsel appearing for the petitioner contends that on 22.9.2011, the claim of the workman qua reinstatement was dismissed by this Court and notice of motion was issued only with regard to the award of compensation. He submits that the workman has failed to make any averment in the claim petition (Annexure

P-1) that during the period he remained out of service, he was gainfully employed.

Mr.Raman B. Garg, learned counsel appearing on behalf of respondent No.1-workman submits that the award of the Labour Court is fair, legal and justified and, therefore, is required to be upheld and the writ petition may be dismissed.

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

The factum of awarding full back wages has been pondered upon by the Hon'ble Supreme Court in **Deepali Gundu Surwase Versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324**. By culling out the principle, it has been observed by the Hon'ble Supreme Court that where the workman has not made any averment in the demand notice or in the claim petition, he is not entitled to back wages. In the instant case, it is matter of record that the workman had not averred that he was not gainfully employed during the period of termination. For the sake of brevity, relevant portion of the claim statement (Annexure P-1) is extracted herein below:-

“1. That the workman was initially appointed through Employment Exchange by the Management of Director, Wheat Research directorate (ICAR) Karnal in the year 1993 on the payment of D.C.rate.

2. That thereafter, the workman had worked with the management continuously on different posts on D.C.rates. After that, the workman was selected/appointed as Messenger in July 2001 on monthly salary of Rs.3000/- p.m. Thereafter, he worked as dispatch clerk upto July 2004. Thus, the workman

had worked with the management from the year 1993 to July 2007 continuously and without any break. The workman has also completed 240 days in a calendar year.

3. That however, on 31st July, 2004, the workman's services were terminated by the management in as abrupt and arbitrary manner.

4. That services of the applicants were terminated in violation of Section 2A, 25F, F & H of I.D.Act 1947.

It is, therefore, respectfully prayed that the workman may kindly be reinstated with continuity of service and full back wages.”

From the averments made in the claim petition, since the workman has not averred that he was not gainfully employed during the period of termination, the award of the Labour Court awarding back wages is against the settled proposition of law and, thus, is vitiated in law.

In view of what has been observed above, the award of the Labour Court to the extent of awarding full wages is accordingly set-aside.

The writ petition is accordingly disposed of.

May 04, 2015
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(AMIT RAWAL)
JUDGE