

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

Civil Writ Petition No.7925 of 2009

Date of Decision: July 20, 2015

Prem Kishore

...Petitioner

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad &
others**

...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.Anil Shukla, Advocate,
for the petitioner.

Mr.Raman B. Garg, Advocate,
for respondent Nos.2 & 3.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 21.1.2009 (Annexure P-3), whereby the reference, vis-a-vis the alleged termination, has been declined on the premise that the Management has lost the confidence in the petitioner.

Mr.Anil Shukla, learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed on 10.9.1994 as Beldar and his services were terminated on the premise that he was allegedly involved in stealing of the R.C.C.poles owned by the HUDA and in this regard FIR bearing No.117 dated 26.2.2000 was registered under Section

411 IPC, though he was convicted by the trial Court on 19.4.2008, but thereafter was acquitted by the Additional Sessions Judge, Faridabad vide judgment dated 4.10.2008, i.e., during the pendency of the reference and the factum of acquittal was brought to the notice of the Labour Court, but yet the Labour Court declined the reference.

Learned counsel for the petitioner further submits that no independent departmental action has been initiated against the petitioner. On account of registration of an FIR, his services have been terminated. Since he has been acquitted in the criminal case, the petitioner is entitled to reinstatement into service with back wages.

Mr.Raman B. Garg, learned counsel appearing on behalf of respondent Nos.2 and 3 submits that since the Management has lost faith in the petitioner, therefore, he could not be reinstated as he was discharging the duty of daily wager and was not a permanent/regular employee and, thus, the Labour Court has rightly declined the reference. He further submits that there is no illegality and perversity in the award of the Labour Court. In support of his submission, he has relied upon the judgment rendered in **B.S.N.L.Versus Bhurumal, 2014(3) S.C.T. 49** to contend that the petitioner is not entitled to reinstatement, much less, back wages.

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

There is no dispute to the ratio decidendi culled out in the aforementioned judgment, where it has been held that a daily/contractual employee would not be entitled to reinstatement in case it is found that the termination was bad in law, but he can only seek reinstatement in those

circumstances, where it has been proved that similarly situated employees have been retained in job and, therefore, the Labour Court has embarked on a path which was not pleaded case of either of the parties to the lis, vis-a-vis the case of regularisation and contractual employment.

The Management has not taken any plea with regard to the provisions of Section 2(o)(bb) of the Industrial Disputes Act, but yet the Labour Court has held that it was a case of contractual employment and, therefore, provisions of Section 2(o)(bb) of the Act were attracted. I am afraid, the aforementioned observations of the Labour Court are totally misconceived and not tenable in law.

By applying the ratio decidendi culled out in B.S.N.L.'s case (supra), particularly when the Management appears to have lost confidence in the workman and the fact that the petitioner has rendered almost six years service and he has faced the agony for almost fifteen years, I do not deem it appropriate to reinstate him into service, but award a compensation of ₹1.00 lac per year.

Accordingly, the writ petition is disposed of and the award of the Labour Court is modified and it is held that the petitioner is entitled to ₹1.00 lac per year as compensation. The Management is directed to make the payment of compensation to the petitioner within a period of three months from the date of receipt of certified copy of this order, failing which it shall entail interest @12% per annum.

July 20, 2015
ramesh

(AMIT RAWAL)
JUDGE