

CWP No.15564 of 2013

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

**CWP No.15564 of 2013
Date of decision:14.05.2015**

Kamlesh Mangla

...Petitioner

Versus

Presiding Officer and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sudhir Aggarwal, Advocate,
for the petitioner.

Mr. Saurabh Arora, Advocate,
for respondent no.2.

Rakesh Kumar Jain, J.

The petitioner has challenged the award of the Industrial Tribunal-cum-Labour Court-I, Gurgaon (hereinafter referred to as the "Labour Court") dated 13.05.2013 by which she has been awarded compensation of ₹80,000/- only in lieu of her reinstatement into service with full back wages.

In brief, the petitioner was appointed as an Operator on 15.06.1995 and thereafter she was made Executive Retail T.R.A. on a monthly salary of ₹7,288/-. On 12.04.2006, she fell seriously ill. Thereafter, on 17.04.2006, she fell down from the stairs of her house and suffered fracture of left foot and remained under treatment upto 13.06.2006. However, she was not allowed to join her duties w.e.f. 15.06.2006 despite

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the fact that she intimated respondent no.2 about her ailment and fracture. The petitioner, thus, served a demand notice under Section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”).

The Labour Court recorded a firm finding that the petitioner is a workman, as defined under Section 2(s) of the Act, she had worked continuously from 01.07.1996 up to 12.04.2006 and her services were terminated without following the provisions of Section 25-F of the Act but while deciding the issue no.2, only ₹80,000/- have been awarded to her towards compensation, though the petitioner had rendered 10 years of service.

After notice, respondent no.2 has put in appearance and filed the reply.

Now the question involved in this case is in a very narrow compass, as to whether the petitioner is entitled to the relief of reinstatement into service with back wages or should she be satisfied with the award of compensation of ₹80,000/- ?

Respondent no.2 though has tried to argue on the merits, touching the other issues regarding which it has not filed the writ petition, therefore, it cannot be allowed to re-agitate about the finding recorded on issue nos.1 and 3 as only the petitioner has come to this Court against the finding recorded on issue no.2.

Counsel for the petitioner has submitted that in view of the very fact that the petitioner had worked for 10 years and has served the demand notice on 03.07.2006 immediately after the date of termination of her

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services on 21.06.2006, the Labour Court has committed a patent error in declining the relief of reinstatement with full back wages without any rhyme or reason.

On the other hand, counsel for respondent no.2 has submitted that the compensation awarded to the petitioner is fair and sufficient and she has rightly been declined the relief of reinstatement into service with full back wages.

I have heard learned counsel for the parties and examined the available record from which I have found that after serving for a decade with respondent no.2, the services of the petitioner were terminated without following the mandatory provisions of Section 25-F of the Act. The Labour Court has given no reason while declining the relief of reinstatement into service with back wages to the petitioner.

In the case of **Niranjan Singh v. Presiding Officer, Labour Court, Patiala and others**, 2014 LabLR 480, this Court had modified the award of the Labour Court, who had awarded only ₹35,000/- instead of reinstatement with back wages, by directing the respondent to reinstate the workman with 50% back wages.

Similarly, in the case of **The Principal Chief Conservator of Forest, Panchkula and another v. Ram Karan and another**, 2012(4) S.C.T. 645 (D.B.), it has been held that once it is established that the workman had worked continuously for more than 240 days in a calendar year preceding his termination and his termination was in violation of Section 25-F of the Act, he cannot be denied reinstatement. In this

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particular case, reinstatement was ordered with 40% back wages.

In the case of **Tribhuvan v. Madhya Pradesh Administration**, 2005(4) LLJ 405, it has been observed by the Delhi High Court that once the Labour Court found termination of the workman unlawful, the Court ought to have directed his reinstatement with back wages and even if it is found that reinstatement was not possible or feasible, then it ought to have granted compensation in lieu thereof by giving cogent reasons.

In the present case, no such reason has been given that the reinstatement of the petitioner-workman with back wages is not possible or feasible by respondent no.2.

Thus, keeping in view the totality of the facts and circumstances, the present petition is hereby allowed and the award passed by the Labour Court is modified to the extent that the petitioner-workman is entitled to be reinstated into service forthwith with 50% back wages.

May 14, 2015
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(**Rakesh Kumar Jain**)
Judge