

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

Civil Writ Petition No.13696 of 2014

Date of Decision: March 30, 2015

Harmesh Kumar

...Petitioner

Versus

Industrial Tribunal, Patiala & 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: Ms.Sukhmani Tiwana, Advocate,
for Mr.Vikas Singh, Advocate,
for the petitioner.

None for the respondents.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 2.9.2013 (Annexure P-1), whereby the petitioner-workman has been granted compensation of ₹20,000/-, to be deposited within 45 days of the publication of the award along with interest @6% per annum till realization.

Ms.Sukhmani Tiwana, learned counsel appearing for the petitioner contends that the petitioner worked as Peon-cum-Chowkidar with the Management from 1.1.1998 to 30.6.2003 @ ₹1500/- per month and completed more than 240 days prior to the date of his termination and the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”) had not been complied with. She further submitted that the

Management though had taken up a plea before the Labour Court that the petitioner was not entitled to relief because he was not employee of the Management and there was no relationship of employer and the employee, yet the Labour Court, on the basis of the evidence brought on record, came to a categorical finding that the petitioner had worked with the respondent Management-Society. She further submitted that once the Labour Court has come to a conclusion that services of the petitioner were terminated without complying with the provisions of Section 25-F of the Act, therefore, all the consequential benefits should entail. In support, she relied upon the judgment of this Court in Ram Dulari Versus Industrial Tribunal, Ludhiana and others (CWP No.20653 of 2012), decided on 17.3.2015, wherein it has been observed as under:-

The matter in regard to the termination of the dispute between the workman and Management has been pondered upon by Hon'ble the Supreme Court in **Jasmer Singh vs. State of Haryana and another** in Civil Appeal No.346 of 2015 decided on 13.01.2015, wherein, while culling out the ratio descendi, by relying upon the judgment rendered in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya** 2013 (10) SCC 324 held that the injury suffered by a person, who has been dismissed or removed or otherwise terminated from service cannot easily be measured in terms of money. Suffering of the family has to be looked from all corners *viz-a-viz* deprivation of nutritious food and all opportunities of education and advancement in life. Therefore, the reinstatement of such employee where the competent authority holds that action taken by the employer was ultra vires of statutory provisions, much less, all principles of natural justice, entitles the employee to claim full back wages and in case, the employer wants to deny

full back wages, onus is on the employer to prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. In essence, Hon'ble the Supreme Court held that the back wages should not be denied to the employee who has suffered due to an illegal act of the employer as it would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

She further relied upon the judgment of the Hon'ble Supreme Court in **Jasmer Singh Versus State of Haryana & Anr.** rendered on 13.1.2015 in Civil Appeal No.346 of 2015 (arising out of S.L.P.(C) No.1532 of 2014) and as well as Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & Distt.Gurdaspur Versus Presiding Officer, Labour Court, Gurdaspur and another**, 2014(4) S.C.T. 514 to contend that the petitioner is entitled to reinstatement into service and as well as the back wages.

Notice of this writ petition had been served upon the respondents, but no one has put in appearance. This fact has also been noticed in the order dated 21.11.2014.

I have heard the learned counsel for the petitioner-workman and appraised the paper book.

No doubt, it is a fact that the Labour Court had come to a categorical finding that the services of the petitioner were terminated without complying with the provisions of Section 25-F of the Act after rendering the finding that there was a relationship of employer and employee. The Management, in any manner, has failed to prove on record the compliance

of provisions of Section 25-F of the Act, i.e., the wages which are required to be sent along with the notice. The Management had also asserted in the claim petition that he has also not gainfully employed during the period he remained out of service. No evidence has been led on behalf of the Management as onus heavily relied upon the Management to rebut that the workman was gainfully employed during the aforementioned period.

In view of the observations, culled out in Ram Dulari's case (supra), the award of the Labour Court is set-aside. The petitioner is held entitled to reinstatement into service with continuity of service. As far as the back wages is concerned, this Court deems it appropriate to award the compensation of ₹50,000/-.

With the aforementioned observations, the writ petition is allowed and the award of the Labour Court is set-aside.

March 30, 2015
ramesh

(AMIT RAWAL)
JUDGE