

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

CWP No.17086 of 2013

Sandeep

..... Petitioner

Versus

The Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar and another

..... Respondents

2.

CWP No.17119 of 2013

Sheo Ram

..... Petitioner

Versus

The Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar and another

..... Respondents

Date of Decision: 06.02.2015

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Devender Punia, Advocate,
for the petitioner.

Mr. Manoj Dhankar, AAG, Haryana.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of CWP No.17086 of 2013 titled *Sandeep vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and another* & CWP No.17119 of 2013 titled *Sheo Ram vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and another* as both

the cases are similar with common questions of law and fact arising therein.

Facts are taken from CWP No.17086 of 2013.

It is not disputed that the petitioner had put in 1 year and 6 months of service as a daily wage employee in the Health Department serving as a Sewadar from January 28, 2008 to June 07, 2009 when his services were terminated without following the procedure prescribed under Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act").

The Labour Court has found ample presence of both foundational facts justifying relief. Firstly, the workman had put in 240 days of service in the last 12 calendar months preceding the date of retrenchment and; Secondly, there was an apparent violation of the mandatory provisions of Section 25-F of the Act inasmuch as procedure for retrenchment was not followed. The Labour Court denied reinstatement since the service was against a public post and the appointment made thereon was not a regular one. Besides, it was too brief in tenure. Basing its opinion on several binding precedents including in **Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh**, [2013] 5 SCC 136 the Court *a quo* correctly analysed the rulings and held that it would not be justified to award reinstatement to service. However, the case could be considered on the question of compensation in lieu of reinstatement. In *Gitam Singh*, the Supreme Court awarded compensation of Rs.50,000/- for 8 months of daily wage service in lieu of reinstatement. In **BSNL v. Man Singh**; (2012) 1 SCC 558, the award was for Rs.2 lacs to each of the two respondent workman for engagement less than two years of service. There are other

cases too which need not be multiplied in this order.

The Division Bench of this Court recently in **Municipal Council, Dina Nagar vs. Presiding Officer** decided on 29.11.2014 in LPA No.754 of 2010 have evolved a workable rule standardising payment of compensation in lieu of reinstatement for Peons and Pump Operators in municipal service upon retrenchment at the rate of Rs.1 lac per year of service rendered by Peons. Though a higher amount was awarded to Pump Operators with which we are not concerned presently.

Applying that principle to one and half years of service, this Court deems it appropriate to award Rs.1,50,000/- as compensation in lieu of reinstatement in the present case and to that extent, the Labour Court award granting a paltry Rs.15,000/- is not sustainable and is thus set aside as it eminently deserves to be interfered with. However, it will be open to the State Government to claim the amount of compensation paid under this order from those officials who are found responsible for non-compliance of Section 25 F of the Act and for lack of notice, payment of wages in lieu of one month's salary and the retrenchment compensation. But if this course is resorted to it would have to be through the route of an inquiry where innocence, guilt or dereliction of duty can be established for non-performance of statutory obligations enjoined by law. In case, such persons have retired and appear to be beyond the reach of rules in a domestic inquiry then action can be initiated on the strength of this order.

With the above directions, the petition is partially accepted and the impugned award is modified and the compensation is enhanced from

**CWP No.17086 of 2013 and
CWP No.17119 of 2013**

-4-

Rs.15,000/- to Rs.1,50,000/- while upholding denial of reinstatement to service. The compensation of Rs.10,000/- towards litigation expenses awarded by the labour court is maintained and shall remain payable as an executable debt.

**(RAJIV NARAIN RAINA)
JUDGE**

06.02.2015
manju