

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

1.

CWP No.1732 of 2013
Date of Decision: 23.03.2015

Rajinder Singh

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

2.

CWP No.22487 of 2013

Jaideep

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vikas Kuthiala, Advocate,
for the petitioner.

Ms.Kirti Singh, DAG, Haryana.

Mr.J.S. Cooner, Advocate,
for respondent No.2.

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of two petitions bearing **CWP No.1732 of 2013** titled as **“Rajinder Singh Vs. State of Haryana and others”** [for short ‘1st petition’] and **CWP No.22487 of 2013** titled as **“Jaideep Vs. State of Haryana and others”** [for short ‘2nd petition’], however, the facts are being extracted from the 1st petition.

The brief facts of the case are that the petitioner was appointed as a Tube-well Operator against a regular post on 1.3.2006 initially on the salary of ₹2000/- per month. He worked upto 22.5.2008. When his service were terminated, the petitioner raised an industrial dispute which was referred to the Labour Court, who vide its order dated 8.11.2011 decided the reference against the petitioner. The reason for deciding against the petitioner was that he was not appointed in accordance with law and was a part time worker.

In this regard, learned counsel for the petitioner has relied upon a decision of the Division Bench of this Court rendered in **“Simla Devi Vs. Presiding Officer Labour Court, Bathinda”** 1996(4) SCT 225. He has also submitted that even if his appointment is not in accordance with Rules and Regulations though he had worked for 3½ years and would be entitled to at least some compensation.

Insofar as the question of the petitioner being a part time worker is concerned, no judgment to the contrary has been cited rather learned counsel for the respondents has submitted that there is no quarrel with the law laid down by the Division Bench of this Court in the case of **Simla Devi (Supra)** in which it is held that a part time worker is not excluded from the definition of ‘workman’ under the Industrial Disputes Act, 1947 [for short ‘the Act’]. Accordingly, it is held that the petitioner was workman under the Act.

Now the only issue which is left to be decided is as to whether the petitioner is entitled to any compensation.

In this regard, learned counsel for the petitioner has relied upon a Full Bench judgment of this Court rendered in **“Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another”** 2014(4) SCT 514, in which this Court has laid down following principles: -

- (i) *Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.*
- (ii) *The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.*
- (iii) *The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the*

availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

- (iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.*
- (v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.*

- (vi) *The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.*
- (vii) *We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”*

In respect of his contention that the petitioner is entitled to some compensation because of the work he has rendered before his services were terminated abruptly he has relied upon the following judgments of this Court: -

“1.	<i>Divisional Forest Officer Vs. Mangat Ram and another</i>
2.	<i>Subhash Chander Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another.</i>
3.	<i>State of Haryana through DDPO, Bhiwani Vs. Ram Avtar and another.</i>
4.	<i>State of Punjab Vs. Lajpat Rai and another.</i>
5.	<i>The Secretary to Govt. of</i>

	<i>Punjab, PWD (B&R) Branch, Punjab Civil Secretariat, Chandigarh and others Vs. Shri Chet Singh and another.</i>
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Learned counsel for the respondents could not cite any judgment to the contrary.

In view of the aforesaid discussion, both the writ petitions are hereby allowed and the petitioner in both the cases are held entitled to a compensation of ₹40,000/- each.

23.3.2015
Vivek

(RAKESH KUMAR JAIN)
JUDGE