

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

**CWP No.20653 of 2012 (O&M)
Date of decision: 17.03.2015**

Ram Dulari

... Petitioner

Vs.

Industrial Tribunal, Ludhiana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for respondents No.2 to 4.

AMIT RAWAL J.

The petitioner-workman has approached this Court by invoking extra ordinary jurisdiction under Article 226/227 of the Constitution of India, for quashing the part of the Award dated 22.11.2011 (Annexure P-2), whereby, the petitioner has been denied the relief of reinstatement with all consequential benefits but only a compensation of ₹10,000/- has been awarded.

The workman has raised her grievance on the premise that she was employed as Mali with the respondent-Management on compassionate ground and joined services of respondent-

Management as Mali on 1.6.2000 and continuously worked upto 3.7.2001 when her services were illegally terminated on 4.7.2001 without serving any notice or charge sheet. At the time of termination, she was drawing a salary ₹1800/- per month. The workman on account of her illegal termination, raised an industrial dispute and the matter was referred to the Presiding Officer, Industrial Tribunal, Ludhiana. Before the Industrial Tribunal, respondent-Management heavily placed reliance on circular dated 1.6.2001, a copy of which has been annexed as Annexure P-4, to contend that in view of the circular issued by the Government of Punjab, the services of the workman was terminated with immediate effect. For the sake of brevity, circular dated 1.6.2001 (Annexure P-4) is extracted herein below:-

“No.9/134/2001-FD (BPE)SO-III/1261-1300

GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE
DIRECTORATE OF INSTITUTIONAL FINANCE &
BANKING AND
PUBLIC ENTERPRISE, SCO 53-55/17-D, CHANDIGARH

Dated: 1.6.2001

1. All the Managing Director/Chief Executive Officers of the Public sector Undertakings/Apex Cooperative Institutions/Board/Authorities of the State of Punjab.
2. All Administrative Secretaries concerned.

Subject: Ban on Contractual/Daily Wage Appointments.

Kindly refer to the subject cited above.

2. It has come to the notice that some of the PSUs

have been violating the established recruitment/selection procedures by devising a novel method to circumvent the established procedures/Punjab Govt. Policy Instructions and started making appointments on Contract Basis. Such contractual appointments are sought to be converted into regular ones after passage of some time. Moreover, such contractual employees appointed against regular vacancies get regularized through legal battles in view of the provisions under certain status.

3. The State Govt. has considered the matter and has viewed such violations seriously. In view of this the following policy directive are issued to be effective forthwith:

(i) Henceforth, no contractual/daily wage appointments shall be made by any corporation, Board or Apex Cooperative Institutions and their subsidiaries without prior permission of the Finance Department. Wherever, such powers are vested with the functionaries of the PSUs or Apex Cooperative Institutions, through the Bye-laws, the said Bye-laws may be modified forthwith.

(ii) Whenever contractual appointments have been made earlier in contravention of Govt. Policy guidelines, from time to time, the same should be dispensed with immediately. Any contractual appointment which is likely

to assume the character of regular appointment, due to the provisions under statutes like Industrial Dispute Act, 1948 and Contract Labour Regulation and Abolition Act, 1970 should be dispensed with on priority.

(iii) If administrative exigencies and public interest so demands, the public sector Undertakings/Apex Cooperative institutions may hire experts/specialists for specific works, whose appointment would be for the completion of that work only but following Rules, which may be framed with the concurrence of FD.

4. The above instructions should be followed by each Public Sector undertakings/Apex Cooperative Institution and their subsidiaries scrupulously. Any violation of such instructions will be the personal responsibility of the Managing Director/Chief Executive Officer of these entities.

5. The details of appointments on daily wage/muster rolls/contractual/work-charged basis during the last 3 years may be supplied to this department within 15 days from the issuance of this letter, as per enclosed format.

6. This is issued with the approval of the Chief Minister.

7. The receipt of this letter may please be acknowledged.

Sd/-
Director
Institutional Finance & Banking
And Public Enterprises”

From the perusal of the circular, it is evident that Government had made it clear that no contractual/daily wage appointments shall be made by any Corporation, Board or Apex Cooperative Institutions.

Sh. Vikas Singh, learned counsel appearing on behalf of the petitioner-workman submitted that once the Labour Court has rightly held that workman has completed more than 240 days in every calendar year prior to the termination of the services and the termination of the services was in violation of the provisions of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act'), therefore, the Labour Court has erred in declining the relief of reinstatement into service with all consequential benefits and in support of his contention, relied upon the judgment of 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 as well as full Bench judgment of this Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014(4) S.C.T.514.

Mr. Pankaj Gupta, learned counsel appearing on behalf of respondents No.2 to 4, in support of his defence submitted that since the workman had worked only for a short period, therefore, the

Industrial Tribunal while exercising power awarded compensation of ₹10,000/-. In support of his contention, he relied upon the judgment of Hon'ble the Supreme Court in **Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh** 2013 (5) 5 Supreme Court Cases 136, Para 22, to contend that the normal rule is though dismissed employee is entitled to reinstatement in cases of wrongful dismissal, but, there has been exception as the consequential relief, would depend upon host of various factors, namely, manner and method of appointment, nature of employment and length of service and particularly, where, length of engagement has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. Thus, a distinction has been drawn between a daily wager and an employee holding the regular post.

Mr. Vikas Singh, learned counsel appearing on behalf of the petitioner, in rebuttal, submitted that case of the petitioner is squarely covered by the principles (i) and (ii) laid down in Municipal Council, Dina Nagar, Tehsil & District Gurdaspur (supra) which are extracted herein below:-

i) Keeping in view the recognized power of the Industrial Tribunal to direct reinstatement on account 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.”

He further submitted that Hon'ble the Supreme Court in Jasmer Singh's case (supra) has held that where the services of the workman have been held to be in violation of the provisions of Section 25 (F) of the I.D.Act, consequential benefits i.e. back wages cannot be denied and the onus of denying back wages heavily relied upon by the Management to prove that the workman was gainfully employed during the period of termination.

I have heard learned counsel for the parties and appraised the paper book and the Award of the Industrial Tribunal and as well as law cited at bar by both the learned counsel for the parties in support of their respective contention and am of the view that Award of the Industrial Tribunal suffers from illegality and is thus, vitiated in law and the findings qua awarding of compensation are erroneous and are not based on any rationale, much less, judicial reasoning. Once the Labour Court has arrived at conclusion that the termination of the services of the petitioner was not in accordance with provisions of Section 25(F) of the I.D.Act and therefore, there

was no occasion for the Labour Court to deny the reinstatement of service.

It is a matter of record that workman has more than six years of service to render, in case, the workman had been ordered to be reinstated.

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.

It is settled law, where, there is different expression of opinion, in two different judgments of Hon'ble the Supreme Court, this Court can rely upon the judgment, in a most pragmatic and justifiable, which is favourable to the party. Hon'ble the Supreme Court in Jasmer Singh's case (supra) has noticed the irony and agony of the workman, particularly, in case, where, the services of the workman have been retrenched against the provisions of Section 25(F) of the I.D.Act.

In view of the observations culled out in Jasmer Singh's case (supra), the Award of Labour Court is set aside, petitioner is entitled to be reinstated into service with continuity of service and qua payment of back wages, this Court deems it appropriate to award compensation of ₹ 60,000/- instead of awarding full back wages.

Accordingly, writ petition is allowed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

March 17, 2015
savita