

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.23639 of 2011 (O&M)

Date of Decision :15.01.2015

Tilak Raj

....Petitioners

Versus

Presiding Officer, Industrial Tribunal Jalandhar and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?Yes

2) To be referred to the Reporters or not?Yes

3) Whether the judgment should be reported in the Digest?Yes

Present : Mr.H.S.Gharoo, Advocate for the petitioner

Mr. Samarth Sagar, Advocate for respondent nos. 2 and 3

MAHESH GROVER, J.

The petitioner impugns the award dated 26.09.2011 where even though the Tribunal had held that dispensation of services of the petitioner to be illegal yet it had denied the grant of reinstatement and limited the relief to one month's pay in lieu of the notice as per the DC rates revised in the year 2000 alongwith retrenchment compensation and gratuity equivalent to five months salary on the last drawn pay as per the DC rates. The petitioner had worked with the respondents from 1995 to 2000.

The plea of the petitioner that reinstatement ought to have been ordered has to be examined from the prospective of settled principle of law that such a course is not automatic and is dependent on several contingencies which have been largely summarized in **Senior Superintendent Telegraph (Traffic) Bhopal) v. Santosh Kumar Seal and others** 2010(6) SCC 773, wherein the Hon'ble Supreme Court observed as

follows :-

“ 7. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of **Jagbir Singh vs. Haryana State Agriculture Marketing Board and Anr. 2009(3) SCT 790: 2009(5) RAJ 153: (2009) 15 SCC 327**, the aforesaid decisions were noticed and it was stated:

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

.....

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by

this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

8. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.”.

The petitioner was working as driver with the respondent – management and worked for a period of 5 years on contractual basis on the prescribed DC rates. In this view of the matter when the petitioner was merely being appointed on contractual basis through summoning of tenders the grant of reinstatement was rightly negated by the Tribunal but an error was committed by the Tribunal in ignoring the issue of compensation. Even though monetary relief has been granted somewhat in terms of which have been referred to above, I am of the view that the same is inadequate. There are no strict parameters to prescribe this relief of compensation which essentially lead to some sort of guess work. Therefore, considering the fact that the petitioner had worked with the respondents for atleast 5 years even though on contractual basis and his services were abruptly dispensed with, I would deem it appropriate to enhance the monetary compensation to the petitioner which is assessed at Rs.2 lacs. Ordered accordingly.

The impugned award is modified to the aforesaid extent.

Disposed of in above terms.

January 15, 2015
rekha

(MAHESH GROVER)
JUDGE