

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 15, 2015

1. Civil Writ Petition No.21181 of 2012

Shiv Kumar

...Petitioner

Versus

The Presiding Officer, Labour Court, Ambala & others

...Respondents

2. Civil Writ Petition No.21198 of 2012

Gurnam Singh

...Petitioner

Versus

The Presiding Officer, Labour Court, Ambala & others

...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: Mr.J.S.Cooner, Advocate,
for the petitioners in both the cases.

Mr.Hitesh Pandit, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J. (Oral)

By this common order, I intend to dispose of two Civil Writ
Petition Nos.21181 and 21198 of 2012 as the common question of law and
facts involved in both the cases is the same.

The workmen have approached this Court by challenging the

award dated 13.12.2010 (Annexure P-1), whereby the reference seeking alleged termination has been dismissed by the Labour Court.

Mr.J.S.Cooner, learned counsel appearing for the petitioner-workmen submits that the petitioner in CWP No.21181 of 2012 joined the services as a Labourer with the respondent-Management in the year 2002 and worked upto 15.5.2007, whereas Gurnam Singh petitioner in CWP No.21198 of 2012 joined the service as Labourer in 2001 and worked upto 16.1.2007. The Labour Court, on the basis of the record produced by the Management, found that the Management did not prove that they have not worked for 240 days in a relevant year and, thus, the Labour Court found that there was violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”), but declined the relief of reinstatement, much less, back wages on the premise that since the workmen were not appointed through advertisement or on sanctioned posts, thus, the Labour Court, while relying upon the judgment rendered in State of Karnataka and others Versus Uma Devi and others, 2006(4) SCC 1, rejected the reference. He submits that the part time workers are not equated with the contractual employees. Since the petitioners never claimed regularisation of their services and, therefore, prays that the award of the Labour Court be set-aside.

Mr.Hitesh Pandit, learned Addl.A.G.Haryana appearing for the State submits that the award of the Labour Court is legal, fair and justified and there is no material defect in the same. The Labour Court has rightly relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in Uma Devi's case (supra) and, therefore, no interference is called for at the

behest of the petitioners by invoking the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

I have heard the learned counsel for the parties and appraised the paper book.

The question posed before me is whether the alleged termination of the petitioners was in consonance with the provisions of Section 25-F of the Act or not. It is a matter of record that the petitioners never sought any reference qua regularisation of their services, but have challenged the impugned action of the respondent-Management qua their alleged termination and they were not allowed to join the duty in the year 2007, which necessitated them to raise the demand notice.

Though there is a passing reference in the claim petition of claiming regularisation, but the pith and substance of the claim petition was only with regard to the alleged termination and having not paid the retrenchment compensation.

Since the petitioners have not been paid any retrenchment compensation and the respondent-Management did not strictly comply with the provisions of Section 25-F of the Act, the termination of the petitioners was, thus, illegal and the Labour Court was enjoined upon an obligation to embark on a path to determine whether the petitioners were entitled to compensation or reinstatement. Since both the petitioners have rendered service of almost five years or more with the respondent-Management, it would not be appropriate to compensate them by awarding compensation. The petitioners in the claim petition did not aver a single word with regard to the fact that they were not gainfully employed during the period they

remained out of service and, therefore, they are not entitled to back wages in view of the law laid down by the Hon'ble Supreme Court in **Deepali Gundu Surwase Versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324.**

Since no retrenchment compensation was paid to the petitioners, therefore, the termination is bad in law and it amounts to unfair labour practice at the behest of the respondent-Management. Accordingly, the petitioners are entitled to reinstatement with continuity of service. The respondent-Management shall give appointment to the petitioners within a period of 45 days from the date of receipt of certified copy of this order and the petitioners shall report for duty on 29.5.15. There shall be no order with regard to awarding of the back wages.

The writ petitions are disposed of accordingly.

May 15, 2015
ramesh

(AMIT RAWAL)
JUDGE