

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

Civil Writ Petition No.22353 of 2012
Date of Decision: July 02, 2015

Dalbir

...Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar &
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.S.K.Verma, Advocate,
for the petitioner.

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

AMIT RAWAL, J. (Oral)

The petitioner-workman has knocked the door of this Court by challenging the finding of the Labour Court, whereby instead of ordering reinstatement and back wages, a compensation of ₹25,000/- has been awarded.

Mr.S.K.Verma, learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed as Sewer Helper/Motor Operator on 1.6.1996 and after rendering service of 6½ years, his services were terminated on 1.11.2002 and thereafter raised the demand notice. The Management did not resort to the provisions of Section 25-F of the

Industrial Disputes Act, 1947 and, therefore, the Labour Court ought to have ordered for reinstatement instead of ordering the compensation. In support of his submission, he has relied upon the judgment of the Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur Versus Presiding Officer, Labour Court, Gurdaspur and another, 2014(4) S.C.T. 514**. He further submits that the post of Sewer Helper-cum-Motor Operator is still available and, therefore, the Labour Court ought to have taken into consideration this fact and ordered reinstatement. On instructions from his client, he submits that the petitioner is willing to forgo back wages in case the reinstatement is ordered.

Mr.Hitesh Pandit, learned Additional Advocate General, Haryana appearing on behalf of the State submits that the petitioner was appointed on daily wages and, therefore, he was not appointed on a sanctioned post. No appointment letter was issued to the petitioner and, therefore, the Labour Court has rightly awarded the compensation of ₹25,000/- instead of ordering reinstatement. He has further submitted that the engagement of the petitioner was purely on temporary basis and a daily wager will not come within the definition of “workman” as the petitioner was not working against a vacant and sanctioned post and the post against which he was working was not also in existence.

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

The Labour Court, while arriving at a finding for determining compensation, found that Vijay Kumar S.D.E.-MW1 in his cross-examination admitted that the workman had worked from 1.6.1996 to

1.11.2002 and the muster-roll produced by the said witness proved the aforementioned fact. Thus, the workman had worked for more than 240 days in each calendar year and it was further held that while terminating the services of the petitioner, no notice/retrenchment compensation was given to the petitioner and, thus, after noticing various judgments, Labour Court found that the reinstatement is not automatic, particularly in case a daily wager. Since no appointment and termination letter was issued to the workman and, therefore, the muster roll did not entitle the workman to reinstatement.

I have gone through the judgment of the Full Bench rendered (supra), wherein it has been laid down that though reinstatement is not an automatic right, but the fact remains that the Labour Court had to take into consideration various aspects, i.e., the nature of appointment, availability of post and availability of work. The workman had specifically pleaded in para 14 of the claim petition that the work and post assigned to him was of permanent nature, but the respondents have considered the petitioner as a daily wager. In response to the aforementioned averment, it has been stated in the reply that the work assigned to the petitioner was purely temporary seasonal nature and not of permanent nature.

The petitioner-workman was appointed as a Sewer Helper-cum-Motor Operator. The process of cleaning of the particular area is a continuous and, therefore, it cannot be termed that no work of a Sewer Helper-cum-Motor Operator was available. Since such posts are to be filled by the Management from time to time in order to maintain the basic civil amenities in the area, the Labour Court ought to have ordered for

reinstatement by taking into consideration the fact that the petitioner had rendered the service of 6½ years.

The Hon'ble Supreme Court in **Jasmer Singh Versus State of Haryana & another (Civil Appeal No.346 of 2015)**, decided on 13.1.2015, while relying upon the judgment rendered in **Deepali Gundu Surwase Versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed), (2013) 10 SCC 324**, has held that the very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been and the injury suffered by a person cannot be easily measured in terms of money. With the passing of the termination order which has the effect of severing the employer and employee relationship, the workmen are deprived of the source of sustenance.

Since the petitioner has made a statement through his counsel that he is willing to forgo the back wages, I deem it appropriate to set-aside the award of the Labour Court. The same is accordingly set-aside and the petitioner is held entitled to continuity of service, much less, reinstatement without payment of any back wages.

Accordingly, the writ petition is allowed.

July 02, 2015
ramesh

(AMIT RAWAL)
JUDGE