

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

**CWP No.6180 of 2010 (O&M)
Date of decision: 10.03.2015**

Vinod Kumar

... Petitioner

Vs.

The Presiding Officer 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. Narender Yadav, Advocate
for the petitioner.

Mr. Aman Chaudhary, Advocate
for Mr. R.S.Dadwal, Advocate
for respondents No.2 to 4.

AMIT RAWAL J.

The petitioner-workman has approached this Court challenging Award dated 07.12.2009 (Annexure P-2), whereby, the Labour Court instead of ordering reinstatement of his services, granted the compensation of ₹ 30,000/- along with interest @ 6% per annum till the payment.

The grievance of the petitioner in nutshell is that he was appointed as Mali on 26.05.1995 on daily wages in the organization of respondents No.2 to 4. According to the petitioner, his services were terminated on 3.5.1996, thereafter, he raised a demand notice

which was referred to the Labour Court for adjudication. The Award dated 27.10.1999 was passed in his favour ordering reinstatement of the workman by holding that the termination of his services was not justified and ordered reinstatement with continuity of service and full back wages. The workman was reinstated back into service by the respondent-Management and thereafter, his services were again terminated on 27.01.2001. The workman again raised demand notice which was referred to the Labour-cum-Conciliation Officer for adjudication. After raising of demand notice, the workman was again allowed to join duty on 23.8.2002, but his services were again terminated on 03.03.2003 without applying the provisions of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') and the workman was drawing his monthly salary @ ₹3500/- per month.

With the aforementioned facts, the workman has again raised demand notice and the matter was referred to the Labour Court for adjudication of the dispute between the parties to the lis (i.e. workman and Management). The Labour Court found that the Institute was not functional since 2000, therefore, the workman was not entitled to reinstatement of service and thus, granted a compensation of ₹ 30,000/-.

Mr. Narender Yadav, learned counsel appearing on behalf of the petitioner-workman has pointed out that respondents only closed the school but opened an Engineering College in the same

premises and, therefore, the plea of the Management is only a ploy to deny the relief to the petitioner. In order to demonstrate that the Engineering College is working in the same premises, the learned counsel for the petitioner has drawn attention of this Court to document at Annexure R-3, a cheque issued by the Management i.e. DAV College of Engineering and Technology in compliance of the order of the Labour Court, vide which the compensation of ₹ 30,000/- has been awarded, thus, submits that Labour Court has committed illegality and perversity in not noticing the aforementioned fact. He also drawn attention of this Court to the documents at Annexures P-3 and P-4.

Mr. Aman Chaudhary, Advocate appearing on behalf of respondents No.2 to 4 submits that the petitioner abandoned his job and did not join duty despite various registered letters sent to him to report for work which has already been annexed at Exhibits R-23 and R-24. The registered letters were received back unserved and even in pursuance of Award of the Labour Court, a cheque of ₹ 30,000/- was also sent to him which was not accepted by the petitioner.

I have heard learned counsel for the petitioner and am of the view that the present writ petition is liable to be allowed and the Award dated 07.12.2009 (Annexure P-2) is liable to set aside and the workman is entitled to reinstate into service along with compensation of ₹ 30,000/- in lieu of back wages, for the reason that in case the plea of the Management is accepted that the petitioner had

abandoned his job and did not join duty, it was incumbent upon the Management to hold a domestic enquiry and, thereafter, in case, the workman had participated or not, should have passed retrenchment order by applying the provisions of Section 25 (F) of the I.D.Act. Though the Labour Court has held that the termination of the petitioner was not in accordance with the provisions of Section 25(F) of the I.D.Act but yet while granting relief did not address earlier events occurred on two occasions whereby service of the workman had been terminated and this fact itself would leave no manner of doubt that respondent-Management had not followed the procedure as envisaged in the I.D.Act and had terminated the services of the petitioner according to their whims and fancies.

The matter with 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, Hon'ble the Supreme Court has culled out the ratio descendi by relying upon to the judgment rendered in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya** 2013 (10) SCC 324 to contend 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 other opportunities of education and advancement in life.

Therefore, not only the reinstatement of such employee, where the competent authority held that action taken by the employer was ultra vires of statutory provisions, much less, all principles of natural justice, is required to be ordered but also entitles the employee to claim full back wages. 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.

The instant case is a case of such kind where the workman had been subjected to harassment at the hands of the Management and compelled to raise claim qua reinstatement. It has been proved on record that Management has closed the school but in the same very premises and else where also opened Engineering College and, therefore, it cannot be remotely ignored or lost sight of fact that there would not be any vacancy of the Mali in the premises of the Management.

In view of what has been observed above, Award dated 07.12.2009 (Annexure P-2) is set aside and the petitioner is ordered to be reinstated into service with continuity of service and qua

payment of back wages, this Court deems it appropriate to Award compensation of ₹ 30,000/- instead of awarding full back wages.

Writ petition is accordingly allowed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

March 10, 2015
savita