

CWP No.3356 of 2012

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

**CWP No.3356 of 2012
Date of decision:28.05.2015**

The Sonapat Cooperative Sugar Mills Ltd. ...Petitioner
Versus
The Presiding Officer and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. B.S.Rana, Senior Advocate, with
Mr. Gagandeep Rana, Advocate, for the petitioner.

Mr. R.K.Malik, Senior Advocate, with
Mr. Vijay Dahiya, Advocate, for the respondent-workman.

Rakesh Kumar Jain, J.

This order shall dispose of a batch of six writ petitions bearing CWP Nos.3356, 3357, 3359, 3364, 3370 and 3412 of 2012 as the question involved in all the cases is similar. However, for the sake of convenience, the facts are being extracted from CWP No.3356 of 2012.

The petitioner is a cooperative society registered under the Haryana Cooperative Societies Act, 1984. It has challenged the award of the Industrial Tribunal-cum-Labour Court, Panipat, whereby the reference has been decided in favour of the workman who has been held entitled to be reinstated in service with 50% back wages from the date of demand notice.

According to the petitioner, the workman was appointed as a Security Guard in the petitioner-society on 31.01.2006 in the pay scale of

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₹2750-4300/- on ad-hoc basis, without the post having been advertised. His services were regularized on 31.05.2006. On 17.08.2006, the President of the Workers' Union made a complaint about illegal appointment of the workman and other persons on extraneous considerations by the Managing Director of the petitioner-society. A fact-finding inquiry was conducted in which it was found that appointment of the workman and five other persons was without advertisement of the posts and without obtaining No Objection Certificate from the Employment Exchange/District Soldier Board. The applications were directly received in the Mill and those persons were appointed. After receipt of the inquiry report, the workman was served with a show cause notice dated 02.11.2006, but instead of filing the reply, he filed a suit along with an application for stay. The Civil Court dismissed the application for stay and, thereafter, the workman was dismissed from service on 18.11.2006 as per the decision taken by the Board of Directors in its meeting held on 17.11.2006. The workman served a demand notice on 08.01.2007, challenging the dismissal order alleging that he was fully eligible for the purpose of appointment to the post in question and the petitioner did not follow the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") as the workman had already completed more than 240 days.

The dispute was referred to the Labour Court where the issue was framed on 24.05.2007 about the legality of the order of dismissal. The Tribunal set aside the order of dismissal, *inter alia*, on the ground that being a confirmed employee, he could not have been dismissed from service

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without following the due procedure and if there was any lapse at the time of his entering into service, it got cured after his confirmation. It was also observed that MW1 has admitted that after dismissal of the services of the workman, fresh recruitment has been made without giving an opportunity to the workman which is in violation of Section 25-H of the Act.

Counsel for the petitioner has argued that service of the workman was governed by the Service Rules for the Employees of the Cooperative Sugar Mills in the State of Haryana (hereinafter referred to as the "Service Rules"), notified on 24.04.1991. He has referred to Rule 6 of the Service Rules, which is reproduced as under:-

"6. Method of Recruitment: The method of recruitment will be as under:-

- (a) By Promotion
 - (b) By Deputation
 - (c) Direct Recruitment
- (a) By Promotion:- By promotion from the permanently/temporary employees of the Societies fulfilling the qualification and experience of the post and having good work and conduct.
- (b) On Deputation:- By taking on deputation from the Govt. or Coop. Sugar Mills in the State of Haryana.
- (c) Direct Recruitment:- Direct recruitment through advertisement/Employment Exchange as per instructions of Govt. issued from time to time.

Qualifications

Sr. No.	Category of Post	By Direct Recruitment	By Promotion
	xx	xx	xx
Security Section:			
1	Security Officer (Sup-C)	Retired Commissioned Officer from Army not below the rank of Capt. (Min.) 5 years experience.	--
2	Clerk (Clerical Grade-IV)	Graduate	--
3	Jamadar (Semi-skilled)	Ex-serviceman with good health	--
4	Watchman (Un-skilled)	Literate with good health preferably Ex-Serviceman.	--
	xx	xx	xx

It is submitted that the workman was appointed as Watchman (un-skilled) from the backdoor as the post was not advertised though Rule 6(c) of the Service Rules provides that the direct recruitment has to be made through advertisement/Employment Exchange as per the government instructions issued from time to time. It is submitted that order of dismissal is not passed because of the misconduct on the part of the workman and would not be treated as a stigma, rather the decision was taken by the Board of Directors in its meeting held on 17.11.2006 that the entry into service by the workman is from the backdoor and for extraneous considerations which has been proved from the inquiry report and on the next day, i.e. 18.11.2006, he was dismissed from service. In support of his submissions, counsel for the petitioner has relied upon a judgment of the Supreme Court in the case of **State of Bihar and others v. Chandreshwar Pathak**, 2014 (4) S.C.T. 135 and a Division Bench judgment of this Court in the case of

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Fateh Singh v. State of Haryana and others, 2006(3) S.C.T. 836. He has also referred to a decision of the Supreme Court in the case of **Jagbir Singh v. Haryana State Agriculture Marketing Board and another**, (2009) 15 Supreme Court Cases 327 to contend that the award of back wages does not follow automatically pursuant to setting aside of order of retrenchment rather in case of illegal retrenchment of a daily wager, the compensation would be a remedy.

Counsel for the respondent-workman has, however, submitted that the workman was dismissed from service which would entail serious consequences as regard to his livelihood and if allegedly his entry into service was without due process/procedure, namely, without wide publicity of the available posts, the regularization of his services itself has cured all the lapses committed by the petitioner and he could not have been dismissed from service without a proper inquiry. It is also submitted that in any case, the workman has completed 240 days in service, therefore, the petitioner should have followed the mandatory provisions of Section 25-F of the Act and in case of replacement, he should have been given preference in accordance with Section 25-H of the Act. It is submitted that there is no error committed by the Court while allowing the reference in favour of the respondent-workman.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Indubitably, the workman had completed 240 days in one year preceding the date of his termination and the petitioner did not comply with

the provisions of Section 25-F of the Act, which reads as under:-

“25F. Conditions precedent to retrenchment of workmen.-- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

The Labour Court has recorded the finding that no proper domestic inquiry was conducted against the petitioner as neither any charge sheet was issued to him nor any adequate opportunity was granted to him to defend. Moreover, MW-1 has also admitted that after terminating the services of the workman, fresh recruitment was made without showing that the workman was given opportunity to appear which is also violative of Section 25-H of the Act, which reads as under:-

“25H. Re-employment of retrenched workmen.--

Where any workmen are retrenched, and the employer

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proposes to take into his employe any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.”

The only argument that has been raised by the petitioner is about the illegal appointment of the workman.

In **State of Bihar's case (supra)** and in **Fateh Singh's case (supra)**, the Court was not dealing with the award of the Labour Court, whereas in the recent decision of the Full Bench of this Court in the case of **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur and another**, 2015(1) PLR 465, while deciding issue no.2 as to “whether the failure to fill up the public posts in accordance with the relevant statutory recruitment Rules dis-entitles a workman for reinstatement”, this Court has drawn the following conclusion(s):-

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

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- (vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act

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by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”

Thus, keeping in view the law laid down by the Full Bench of this Court in **Municipal Council, Dina Nagar's case (supra)** and the fact that the petitioner has not complied with the provisions of Sections 25-F and 25-H of the Act, I do not find that any error has been committed by the Labour Court while passing the impugned award.

In view thereof, all the writ petitions filed by the petitioner are hereby dismissed.

May 28, 2015
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(**Rakesh Kumar Jain**)
Judge