

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

Civil Writ Petition No.23731 of 2015

Date of decision: 5.11.2015

Kuldeep Singh

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Amarjit Singh, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The termination took place in September, 1998. The workman raised a dispute by serving a demand notice on the management. The conciliation proceedings failed and a reference was made to the Labour Court, Amritsar by the appropriate government. On notice, the State contested the reference. The parties adduced their respective documentary evidence and the witnesses produced for and against were examined and cross-examined by both the sides.

2. One fine day, the petitioner withdrew the reference and the Labour Court permitted him to on 12.1.2007 with liberty to file a fresh reference in case the workman desired. The workman came back with the fresh demand notice invoking the provisions of Section 25-H of the

Industrial Disputes Act, 1947 [in short, “the Act”] claiming that in the earlier reference, the evidence had come through the deposition of MW1 Hardeep Singh, Assistant Engineer, Punjab Water Supply & Sanitation, Sub Division No.4, RWS, Amritsar where he testified that the workman had himself left the job in the month of September, 1998 imputing that he had abandoned his services. Hardeep Singh also deposed that a new Tubewell Operator namely Iqbal Singh was appointed in place of the petitioner. He also deposed that no order was passed on 30.9.1998 asking the petitioner to leave service. The notice of termination alleged by the workman dated 30.9.1998 remained un-exhibited on record and was numbered as Mark-A. This meant that it could not be read in evidence without proper mode of proof. The petitioner having run through almost a full dress rehearsal of a trial before the Labour Court in the previous proceedings even though permitted to be withdrawn, the reference was again sought by raising a fresh dispute and having returned to the Court in this manner to play a second innings though on a different footing, has diluted his rights under Section 25-H considerably, sufficient for this Court not to interfere in the matter while dealing with public posts of Pump Operators in the Department of government and therefore, I find no fundamental flaw or perversity in the findings of the Labour Court in declining the reference to the petitioner based on right of re-entry through portal of Section 25-H of the Act although it is a valuable right to a workman but that right is to be activated and determined in the given set of facts and circumstances which judicial review lies exclusively in the discretion of the Labour Court for it to form an opinion as to relief to be granted or denied. When the opinion is formed

reasonably on the evidence available on record, it is not for this Court in the supervisory jurisdiction provided under Article 226 of the Constitution of India to substitute its opinion or to re-appreciate the evidence on record and come to a different conclusion.

3. For these reasons, I find no error apparent on the face of the record and would dismiss the petition.

4. In any case, to return the petitioner as a Tubewell Operator after a gap of 17 years, i.e., from 1998 to 2015 is a little hard to buy for this Court to venture intervention. It cannot be disputed that the right under Section 25-H of the Act can lead to reinstatement or to compensation in lieu of reinstatement but I do not think that for 7 months of service it should automatically be ordered or to turn this case into one of compensation in lieu of reinstatement. This is more so when the case was not built by the petitioner in the second reference around the structure of Section 25-F of the Act. Therefore, reliance in case **Head Master, Govt. Primary School, Sekhupura v. Roop Kala and another**; 2015 (3) RSJ 408 is inappropriate as the case is clearly distinguishable on facts.

5. It is a trite law that by itself Section 25-H gives a right to reinstatement if another person is employed or engaged by the management on the post held or occupied by the workman when he was shunted out of service but this does not mean that in the departments of Government where cadre posts are filled by regular recruitment process, the principles of Section 25-H can be applied ad infinitum which are strictly governed by statutory service rules framed under the proviso to Article 309 of the Constitution of India. This Court is, therefore, not persuaded by the

submission of Mr.Amarjit Singh learned counsel for the petitioner that this is a fit case for interference or is a case for reinstatement or even one of awarding compensation in lieu of reinstatement for a brief period of service of only 7 months which does not add up to 240 days. The writ court will embark upon a journey to re-appreciate the evidence as if it were sitting in appeal and reach a different conclusion than the one reached by the Labour Court which view was eminently plausible and possible and could have been taken on the facts presented. Besides, there is no clarity on file with respect to the appointment of Iqbal Singh and the circumstances surrounding it and the deposition of the official witness produced by the workman in cross examination who said that Iqbal Singh was employed after the petitioner left. It is not safe to rely on such evidence and the labour court rightly declined the reference.

6. As a result of the above reasons recorded, this Court finds hardly any grounds to interfere with the impugned award and there being no substance in the petition, it is ordered to be dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

November 5, 2015

Paritosh Kumar