

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

**CWP No.6531 of 2012 (O&M)
Date of decision: 07.05.2015**

The Chairman, Shaheed Darshan Singh
Pheruman Public School, Amritsar

... Petitioner

Vs.

Dalbir Singh and another

... Respondents

CWP No.6662 of 2012 (O&M)

The Chairman, Shaheed Darshan Singh
Pheruman Public School, Amritsar

... Petitioner

Vs.

Baldev Singh and another

... 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?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. G.S.Bal, Senior Advocate with
Mr. ADS Bal, Advocate
for the petitioner.

Mr. R.S.Ahluwalia, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two writ petitions

bearing Nos.6531 and 6662 of 2012 as the issue and question of law involved are common.

For the sake of convenience, the facts are being taken from CWP No.6531 of 2012.

Challenge in the present writ petitions is to the Award dated 12.09.2011 (Annexure P-8), passed by the Presiding Officer, Industrial Tribunal, Amritsar, whereby, the reference has been answered in favour of the workmen ordering reinstatement with continuity of service with 50% back wages along with interest @ 8% per annum.

Mr. G.S.Bal, learned Senior counsel assisted by Mr. A.D.S.Bal, Advocate submits that Award of the Labour Court awarding back wages is not in consonance with the averment made in the demand notice and claim petition as workmen did not aver even a single word that they were not gainfully employed during the period they remained out of job and in this regard, relied upon the judgment of Hon'ble the Supreme Court in Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalya and others **2013 (10) SCC 324**. He also submits that even the order of reinstatement is vitiated in law and thus, Award of the Labour Court is liable to be dismissed.

Mr. R.S.Ahluwalia, learned counsel for respondent No.1 submits that Award of the Labour Court is just, fair, legal and in consonance with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act').

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

It is a matter of record that the workmen have not made any averment in the demand notice and claim petition qua the fact that they were not gainfully employed during the period they remained out of job.

In view of the law laid down in Deepali Gundu's case (supra), awarding of back wages is not sustainable in the eyes of law as workmen did not plead or aver in the demand notice and claim statement. As regard, the alleged termination of the workmen, it has been proved on record that the workmen were not permitted to enter the school premises and the plea of the Management that they absented intentionally and willfully, much less, abandoned the job is not sustainable on the ground that had it been so, the Management would have been at liberty to initiate the enquiry by serving show cause notice to the workmen at their available address. No such exercise has been done. There is clear cut violation of the law laid down in **D.K.Yadav vs. J.M.A. Industries Limited** (1993) 3 Supreme Court Cases 259.

Mr. A.D.S.Bal, learned counsel for the petitioners-Management submits that the workmen be given liberty to join the Management on 11.05.2015 so that they could be permitted to join their service.

In response, Mr. R.S.Ahluwalia, learned counsel for

respondent No.1 very fairly conceded that the workmen shall report for duty on 11.05.2015 itself.

In view of the aforesaid circumstances and also the agreed stand taken by both the counsel, the Award of the Labour Court holding that termination of the workmen was in violation of the provisions of Section 25-F of the I.D.Act is upheld but workmen shall not be entitled to back wages and the writ petitions stand disposed of.

(AMIT RAWAL)
JUDGE

May 07, 2015
savita