

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

**CWP No.2738 of 2013 (O&M)
Date of decision: 13.03.2015**

The Headmaster, Govt. High School Nandal, Rohtak

... Petitioner

Vs.

The Presiding Officer 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? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ravi Pratap Singh, AAG, Haryana
for the petitioner.

Mr. Sandeep Singal, Advocate
for respondent No.2.

AMIT RAWAL J.

The State has approached this Court by challenging the Award dated 30.5.2012 (Annexure P-4), passed by the Industrial Tribunal-cum-Labour Court, Rohtak, whereby, the services of respondent No.2 has illegally been terminated and the workman has been ordered to be reinstated on his previous post with continuity of service and 50% back wages from the date of demand notice dated 28.11.2005.

The workman stated in the demand notice, he was appointed on 30.9.1996 as a Water Carrier on the part time basis and his services were illegally terminated on 29.3.2000. The factum of workman having been worked more than 240 days in a calendar year has been proved through the testimony of MW-1 Rajender Singh, Head Master Govt. High School. This fact has been noticed by the Labour Court in paragraph 8 of the Award and the Labour Court on the basis of the evidence brought on record, came to a categoric finding that the services of the respondent-workman has been terminated in violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act'), as no retrenchment compensation was given.

Learned counsel appearing on behalf of the State, argued that the workman had not pleaded that he was not gainfully employed during the period, he was out of service and in the absence of the pleadings, Labour Court could not have granted 50% back wages. He further submitted that there was no post, whereby, the workman could be taken back into service.

Whereas, on the other hand, learned counsel appearing on behalf of the respondent-workman argued that onus to prove that workman was gainfully employed is on the part of employer and in support of aforementioned argument, he relied upon the judgment of Hon'ble the Supreme Court in **Jasmer Singh vs. State of Haryana** and another in **Civil Appeal No.346 of 2015** decided on 13.1.2015.

He further submitted that Management has not led any evidence qua availability of post.

I have heard learned counsel for the parties and appraised the impugned Award as well as judgment cited at bar and am of the view that findings of the Labour Court is just and fair and in consonance with the ratio descendi culled out by Hon'ble the Supreme Court in Jasmer Singh's case (supra). No doubt, onus to prove that the workman was gainfully employed is on the employer.

In the instant case, no evidence has been brought on record to prove that the workman was gainfully employed. Once the Labour Court has categorically arrived at conclusion that there was violation of provisions of Section 25F of the I.D.Act, reinstatement of workman was inevitable.

As regards, the payment of back wages, it is a matter of concern that Labour Court/this Court cannot be oblivious to the fact that workman, during his unemployment, suffering of the family has to be looked from all corners *viz-a-viz* deprivation of nutritious food and opportunities of education and advancement in life.

Keeping in view the aforementioned observations, I am of the considered view that awarding 50% of the back wages is not against ratio descendi culled out by Full Bench judgment of this Court in **Municipal Council, Dina Nagar, Tehsil and District, Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014 (4) S.C.T.514.

In view of what has been observed above, there is no merit in the present writ petition and the Award of the Labour Court is upheld. Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

March 13, 2015
savita