

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

1. CWP No.7056 of 2012

Date of decision: 01.05.2015

Municipal Committee, Nilokheri

... Petitioner

Vs.

Presiding Officer & another

... Respondents

2. CWP No. 7391 of 2012

Municipal Committee, Nilokheri

... Petitioner

Versus

Presiding Officer & another

... Respondents

3. CWP No. 7419 of 2012

Municipal Committee, Nilokheri

... Petitioner

Versus

Presiding Officer & another

... Respondents

4. CWP No. 7426 of 2012

Municipal Committee, Nilokheri

... Petitioner

Versus

Presiding Officer & another

... Respondents

5. CWP No. 7430 of 2012

Municipal Committee, Nilokheri

... Petitioner

Versus

Presiding Officer & another

... Respondents

6. CWP No. 7432 of 2012

Municipal Committee, Nilokheri

... Petitioner

Versus

Presiding Officer & another

... Respondents

7. CWP No. 7448 of 2012

Municipal Committee, Nilokheri ... Petitioner

Versus

Presiding Officer & another ... Respondents

8. CWP No. 9110 of 2012

Municipal Committee, Nilokheri ... Petitioner

Versus

Presiding Officer & another ... Respondents

9. CWP No. 9121 of 2012

Municipal Committee, Nilokheri ... Petitioner

Versus

Presiding Officer & another ... Respondents

10. CWP No. 9139 of 2012

Municipal Committee, Nilokheri ... Petitioner

Versus

Presiding Officer & another ... Respondents

11. CWP No. 9149 of 2012

Municipal Committee, Nilokheri ... Petitioner

Versus

Presiding Officer & another ... Respondents

12. CWP No. 9150 of 2012

Municipal Committee, Nilokheri ... Petitioner

Versus

Presiding Officer & another ... Respondents

13. CWP No. 9151 of 2012

Municipal Committee, Nilokheri ... Petitioner

Versus

Presiding Officer & another

... Respondents

14. CWP No. 9211 of 2012

Municipal Committee, Nilokheri

... Petitioner

Versus

Presiding Officer & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Sachin Gupta, Advocate for the petitioner(s).

Ms. Abha Rathore, Advocate for respondent No.2/workmen.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of ***CWP No.7056 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.7391 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.7419 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.7426 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.7430 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.7432 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.7448 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.9110 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.9121 of 2012 titled as Municipal Committee,***

Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.9139 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.9149 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.9150 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, CWP No.9151 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another and CWP No.9211 of 2012 titled as Municipal Committee, Nilokheri Vs. Presiding Officer, Labour Court & another, as identical issue is involved in these petitions.

Municipal Committee, Nilokheri has laid a challenge in these connected petitions to 14 separate awards passed by the Industrial Tribunal-cum-Labour Court, Panipat carrying even date i.e. 23.12.2010, whereby the reference has been answered in favour of the workmen and they have been held entitled to reinstatement with continuity of service and 50% back wages. Further challenge in each of these petitions is to the order dated 14.12.2011 wherein the prayer made by the petitioner/Committee for setting aside the ex parte award has been declined.

Mr. Sachin Gupta, learned counsel appearing for the petitioner/Committee would submit that the work of sanitation of the town of Nilokheri was allotted to a Contractor, namely, Kadam Singh and the workmen/private respondents in these petitions were in turn outsourced by the contractor. On the strength of such submission, it has been argued that the workmen having never been engaged by the Committee, the question of compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') would not arise. It has further been contended that

the labour Court has erred in recording a finding that the workmen had served for the period March, 2003 to 31.12.2003 in the absence of any relevant material having been adduced on record. Counsel argues that the onus was on the workmen to have produced the appointment letter to substantiate the claim of being an employee of the petitioner/committee and in the absence of such cogent evidence an ex parte award has been passed only on the basis of a solitary statement furnished by the workmen and as such, the impugned award cannot sustain. Further contention raised by counsel is that even the relief of reinstatement could not have been granted by the labour Court as daily wagers or casual workers have no right to hold the post.

Insofar as the order dated 14.12.2011 passed by the labour Court is concerned, counsel would argue that the petitioner/committee cannot be penalized on account of negligence of the counsel who had been engaged for defending the case in the labour Court. It is further submitted that the Committee was not aware of the passing of the award and such fact came into knowledge on 31.05.2011 when the workmen had moved an application along with copy of the award to permit him to join back on duty. The labour Court is stated to have erred in dismissing the application seeking setting aside of the ex parte award by raising a submission that the period of limitation for entertaining such an application was to be construed to start from the date of knowledge i.e. 31.05.2011.

Per contra, Mrs. Abha Rathore, learned counsel representing the workmen/private respondents in these connected petitions would contend that a finding having been recorded as regards non compliance of the provisions of Section 25-F of the Act, reinstatement in service would be

the obvious consequence. In support of such contention, heavy reliance has been placed upon judgment of the Hon'ble Supreme Court in **Harjinder Singh v. Punjab State Warehousing Corporation, (2010) 3 SCC 192** as also a recent decision of the Apex Court in **Civil Appeal No.346 of 2015 (arising out of SLP (C) No.1532 of 2014 Jasmer Singh V. State of Haryana & another** decided on 13.01.2015. Counsel has further argued that the findings of the labour Court and the discretion exercised while granting the relief of reinstatement and confining the back wages of 50% would not call for any interference by this Court in exercising of its supervisory jurisdiction under Article 226 of the Constitution of India.

Counsel for the parties have been heard at length.

Pleadings on record would indicate that in the demand notices that were served, the workmen (private respondents herein) had taken a stand that they were employed by the Secretary, Municipal Committee, Nilokheri as Sweepers in the month of March, 2003 and had worked regularly upto 31.12.2003 and their presence had been regularly marked in the attendance register maintained by the Supervisor of the Municipal Committee. As per demand notices, the workmen had completed more than 240 days' under the control of Municipal Committee, Nilokheri but had not been permitted to join duties after 31.12.2013. No notice of termination and compensation had been given to the workmen prior to disengaging them from service. In the reply furnished on behalf of the Committee, a stand had been taken that the sanitation work of the town had been assigned to contractor, Kadam Singh on contractual basis and who might have engaged the workmen in question. It was further stated that there was no relationship of employer and employee between the parties.

Perusal of the impugned award would reveal that two crucial issues were framed by the labour Court i.e.;

- (i) whether service of the workmen had been terminated validly or not and;
- (ii) whether there is no relationship of employer or employee between the parties as alleged, if so to what effect?

Both issues were taken up for adjudication together by the labour Court.

In each of these cases, the workmen had appeared in the witness box and made a deposition in line with the affidavit filed of having been employed as a Safai Karamchari on 01.03.2003 and having worked upto 31.12.2003. Thereafter, services had been terminated without giving any notice or pay in lieu of notice and retrenchment compensation. The workmen had also deposed that they had worked with the Committee for more than 240 days'.

The question of burden of proof as of completion of 240 days' of continuous work in a year and to avail protection under Section 25-F of the Act came up for examination before the Hon'ble Supreme Court in **R.M. Yellatti, (2006) 1 SCC 106** and it was observed as under:

“Thus burden is discharged upon the workmen adducing cogent evident, both oral and documentary. In cases of termination of services of daily waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, workmen (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of an adverse inference ultimately would depend thereafter on the facts of each case.”

Adverting back to the facts of the present case, it has gone

uncontroverted that the workmen had examined WW2, Sh. Jaipal, Clerk office of Municipal Committee, Nilokheri and who in turn had been directed by the labour Court to bring the summoned record pertaining to each workmen. Counsel for the workmen/private respondents has produced during the course of hearing before the Court the certified copies of the zimni orders passed during the course of proceedings before the labour Court and which would demonstrate that application was moved by the workmen for summoning record from the Municipal Committee on 18.05.2009. Jaipal, Clerk of the Municipal Committee, WW2 had appeared before the labour Court on 01.09.2010 but without record and was bound down for the next date i.e. 11.10.2010. On 11.10.2010, Jaipal, Clerk did not appear and adjournment was sought on the ground of demise of some close relation. Again on 02.11.2010, Jaipal, Clerk did not appear nor any information was received by the Presiding Officer and as such, summons through bailable warrants were issued. On 23.12.2010, Jaipal, Clerk of Municipal Committee, Nilokheri duly appeared and gave statement that the summoned record is not in the office of the Committee and even the license of the Contractor, namely, Kadam Singh was not available.

The workmen/private respondents herein were not regular employees. Their status was akin to that of daily wagers. The Municipal Committee, Nilokheri was the custodian of the records. Undoubtedly, the initial onus to prove the fact of having completed more than 240 days' in service in the 12 preceding months from the date of termination was on the workmen. Towards discharging such onus, workmen had summoned the concerned witness and who in turn had been directed by the labour Court to produce the records. Requisite record was not produced on the plea that the

same was not available. Jaipal, Clerk of Municipal Committee, Nilokheri, WW2 did not even produce the license of the Contractor, Kadam Singh, which otherwise could have substantiated the stand of the petitioner/Committee as regards sanitation work of the town having been assigned to such Contractor and the workmen having further been outsourced by the Contractor and there being no relationship of employer and employee between the parties.

Under such circumstances, this Court does not find any infirmity as regards the labour Court having drawn an adverse inference against the petitioner/Committee and having taken a view that the workmen had completed 240 days' in the 12 months from the date of termination and there being non compliance of Section 25-F of the Act.

Even with regard to the impugned order dated 14.12.2011 passed by the labour Court declining the prayer of the petitioner/Committee for setting aside the ex parte award is concerned, the same is found to have been passed on valid and cogent basis. Impugned award was passed on 23.12.2010 and was published on 31.03.2011. Under Section 17-A (1) of the Act, an award becomes enforceable on expiry of 30 days' from the date of its publication under Section 17 of the Act. Section 20(3) of the Act provides that proceedings before the labour Court/Tribunal shall be deemed to have concluded on the date on which award becomes enforceable. The labour Court has rightfully held in the order dated 14.12.2011 that upon expiry of 30 days' from the date of publication of the award in the gazette and the same having become enforceable, the labour Court became 'functus officio'.

That apart, the contention raised by counsel for the

petitioner/Committee that the period of limitation should have commenced from the date of knowledge i.e. 31.05.2011 is totally misconceived. Facts of the present case only indicate the reckless manner in which the Committee has pursued the case before the labour Court. Even though averments are lacking in these connected petitions filed by the petitioner/Committee, yet counsel has not been able to rebut the factual position that vide order dated 09.11.2005, the petitioner/Committee had been proceeded ex parte before the labour Court. Thereafter on 16.05.2006, an application for setting aside ex parte proceedings had been allowed. Only thereafter written statement was filed by the petitioner/Committee on 31.05.2006. No representation having been caused repeatedly thereafter order was passed on 28.01.2009 by the labour Court for proceeding ex parte against the petitioner/Committee. Even thereafter Jaipal, WW2, who was a Clerk in the office of the Municipal Committee, Nilokheri, had been summoned to appear along with the relevant record and had put in appearance on 01.09.2010 as also on 23.12.2010. It would not be open for the petitioner/Committee as such to take a stand that they were not aware of the proceedings being conducted before the labour Court.

In view of the facts noticed herein above, there would be no basis that would warrant interference in the order dated 14.12.2011 passed by the labour Court declining the prayer of Municipal Committee for setting aside the ex parte award dated 23.12.2010.

The question that would however remain for consideration before this Court is as to whether the workmen/private respondents herein in these bunch of petitions were entitled to the relief of reinstatement by virtue of their termination having been held to be illegal on account of non

compliance of Section 25-F of the Act?

In **Harjinder Singh's case (supra)**, reliance upon which has been placed by counsel appearing for the private respondents, the Apex Court had interfered with the order of the High Court which awarded compensation to the workmen by modifying the award of reinstatement passed by the labour Court. However, the facts of the case were that Harjinder Singh, workmen had been initially employed with the Punjab State Warehousing Corporation as Work Charge Motor Mate but after few months, he was appointed as Work Munshi in the regular pay scale for a period of 3 months. His service was extended from time to time and thereafter by giving one months' notice, his service was brought to an end on 05.07.1988 by the Managing Director of the Corporation. workmen had challenged the implementation of the notice by way of filing a writ petition and by an interim order, the High Court had stayed the implementation of that notice but subsequently, the writ petition was permitted to be withdrawn with liberty to the workmen to avail his remedy under the Industrial Disputes Act. After 2 months, the Managing Director of the Corporation issued notice dated 26.11.1992 for retrenchment of the workmen along with few others by giving them one months' pay and allowances in lieu of notice as per requirement of Section 25-F (a) of the Industrial Disputes Act. On industrial dispute having been raised, the labour Court found that there was compliance of Section 25-F of the Act but the termination was found to be violative of Section 25-G of the Act and accordingly, the labour Court passed an award for reinstatement of the workmen with 50% back wages. Learned Single Judge of the High Court did not approve the award of reinstatement on the premise that initial

appointment of the workmen was not in consonance with the statutory regulations and Articles 14 and 16 of the Constitution and accordingly, substituted the award of reinstatement with 50% back wages by directing that the workmen shall be paid a sum of Rs.87,582/- by way of compensation. The facts in **Harjinder Singh's case (supra)** are clearly distinct. He was held to be not a daily rated worker and the Apex Court had intervened having observed that the High Court had entertained an unfounded plea that the workmen was employed in violation of Articles 14 and 16 of the Constitution. In the present case, it is not even the plea of the workmen/private respondents that they came to be engaged in pursuance to any regular selection process.

Likewise the judgment of the Hon'ble Supreme Court of India in **Jasmer Singh's case (supra)** would also not enure to the benefit of the workmen/private respondents. Undoubtedly, Jasmer Singh, workmen had worked as daily paid worker for the period 01.01.1993 upto December, 1993. Upon his service having been discontinued, he had raised an industrial dispute contending that he had completed more than 240 days' of continuous service in one calendar year and his service had been terminated on 31.12.1993 without complying with the mandatory provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. The labour Court had set aside the order of termination and awarded the relief of reinstatement to Jasmer Singh with continuity of service and full back wages. Such award had been set aside by the learned Single Judge in terms of order dated 07.04.2010 passed in CWP No.9532 of 2001 and the judgment was affirmed by the Division Bench. The Apex Court while restoring the relief as granted by the labour Court had held that since

termination of services of Jasmer Singh, workmen was bad for non compliance of Sections 25-F, 25-G and 25-H of the Act, therefore the labour Court has rightly set aside the order of termination of service and granted relief of reinstatement with continuity of service and full back wages. Non compliance of Sections 25-F, 25-G and 25-H of the Act and which had weighed with the Apex Court while granting relief to Jasmer Singh would be discernible from the following observations made in the judgment in Jasmer Singh's case (supra):

“13. In view of the aforesaid statement of law the setting aside of the Award by the learned Single Judge which is affirmed by the Division Bench is vitiated in law as the same is contrary to the judgments of this Court referred to supra, upon which the learned counsel for the appellant has rightly placed reliance in support of the correctness of the finding recorded by the labour court on the various issues, particularly the finding of fact that the workmen has worked for more than 240 days in a calendar year and termination order is void ab initio in law for non- compliance of Sections 25-F (clauses (a) and (b)), 25-G and 25-H of the Act, therefore, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workmen and awarded the order of reinstatement with continuity of service and full back wages.”

In these connected petitions, the labour Court by drawing an adverse inference against Municipal Committee, Nilokheri has recorded a finding only as regards non compliance of Section 25-F. No finding has been recorded as regards violation of Sections 25-G and 25-H of the Act. The judgment in Jasmer Singh's case (supra), as such, would not be applicable in the present case.

The Hon'ble Supreme Court in Assistant Engineer, Rajasthan

Development Corporation and another Vs. Gitam Singh, 2013 (2) SCT 30

while dealing with the workmen who had worked only for 8 months as a daily wager and had been granted the relief of reinstatement with continuity of service and 25% back wages had intervened in the matter and granted compensation in lieu of reinstatement by drawing a distinction between a daily wager as opposed to a regular employee holding a post. Even the judgment rendered in Harjinder Singh's case (supra) was considered and it was observed as follows:

“In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute.”

The judgment in Gitam Singh's case (supra) has been followed in BSNL v. Bhurumal, 2014 (7) SCC 177, wherein the Apex Court was seized of a dispute where the workmen was a Lineman on daily wage basis and had claimed to have worked from 1987 till 2002 and whose services were terminated. Reinstatement was directed by the Central Industrial Disputes Tribunal, Chandigarh and which was upheld by the Single Bench

and Division Bench of the High Court. The Apex Court again intervened and while denying relief of reinstatement awarded compensation of Rs.3 lacs in lieu thereof. It was observed that there was a shift in the legal position and reinstatement with back wages in the case of a daily wager and whose termination had been found in violation of Section 25-F of the Act was not automatic.

In a recent Full Bench decision of this Court in **Municipal Council, Dinanagar, Tehsil and District Gurdaspur v. Presiding Officer, Gurdaspur & another, 2014 (4) SCT 514**, it has been held that in the case of a daily wager and whose termination has been found to be in violation of Section 25-F of the Act, the labour Court while awarding relief would have to take into consideration various aspects i.e. nature of appointment, availability of post, availability of work, whether appointment was as per rules and and statutory provisions, length of service as also delay in having raised the industrial dispute.

Facts of the present case bring forth certain relevant and material aspects. The workmen/private respondents had not been engaged on a regular basis. Concededly, the length of service of each of the workmen was less than one year. Their termination relates back to the year 2003. These vital factors have been completely over looked by the labour Court while directing reinstatement with continuity of service. This Court would have no hesitation in holding that the discretion exercised by the labour Court suffers from a patent infirmity and cannot sustain.

Applying the dictum of law laid down in **Gitam's case (supra)**, **Bhurumal's case (supra)** and **Municipal Counsel Dinanagar's case (supra)**, the workmen/private respondents could not have been granted the

relief of reinstatement. In the considered view of this Court, compensation of Rs.2 lacs each in lieu thereof would meet the ends of justice.

Ordered accordingly.

Petitioner/Committee is directed to release such payment of compensation amount of Rs.2 lacs to each of the respondent/workmen within a period of 8 weeks' from today, failing which, the same shall carry interest at the rate of 8% per annum.

For the reasons recorded above, these writ petitions are partly allowed. Impugned award dated 23.12.2010 in each of these petitions is modified to the extent of the workmen being held entitled to Rs.2 lacs compensation each in lieu of reinstatement.

Petitions allowed in the aforesaid terms.

01.05.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether referred to the Reporter?

Yes