

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

CWP No.418 of 2013
Date of decision : 23.03.2015

Darshan Singh

...Petitioner

Versus

Presiding Officer and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Piyush Gaur, Advocate for
Mr. Raman Gaur, Advocate for the respondent No.2.

AMIT RAWAL, J. (Oral)

Respondent No.2 has filed reply in Court.

The same is taken on record.

Challenge in the present writ petition is to the award of the Labour Court, whereby the Labour Court instead of reinstating the petitioner had awarded the consolidated payment of ₹30,000/-.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the petitioner-workman submits that application for issuing appropriate direction to the respondent No.2 was filed to produce the record pertaining the attendance of the workers for the period from 01.10.2003 to 19.10.2005, salary register of said period and the retrenchment order if any terminating

the service of the petitioner, much less, record pertaining to the payment of the compensation. However, in pursuance of the said direction one Mr. Bhale Ram, Assistant had put in appearance but did not bring on record agreement Ex.R-2/2 dated 09.09.2003. He submitted that the petitioner had filed a Civil Suit against the Management for payment of salary w.e.f. 01.10.2003 to 30.10.2004 and the copy of the judgment had been exhibited as Ex.W-5 and the appeal filed against the same had also been dismissed and, therefore, the Labour Court ought to have ordered for reinstatement instead of granting compensation.

Mr. Piyush Gaur, learned counsel appearing on behalf of respondent No.2 contends that there was agreement between one M/s Start Career Academy, Sirsa & the management and it was that agency who was to provide manpower and thus, there was no relationship between the employer and employee and, therefore, award of the Labour Court awarding the compensation is fair, legal and justified.

I have heard the learned counsel for the parties and appraised the paper book and am of the view that once the Labour Court has found that termination of the services of the petitioner was in violation of provisions under Section 25(F) of the Act. Consequential benefits i.e. reinstatement and continuity in service was required to be passed.

Mr. Sanjiv Gupta, learned counsel for the petitioner has relied upon the judgments of Hon'ble Supreme Court of India rendered in *Harjinder Singh Vs. Punjab State Warehousing Corporation, 2010(1) SCT 725* and *Devinder Singh Vs. Municipal Council, Sanaur, 2011(3) S.C.T. 139* in support of his arguments.

I have gone through the aforementioned arguments and am of the view that once Labour Court has rendered a finding with regard to the violation of provision of Section 25-F of the Act, there was no occasion for the Labour Court to award compensation in lieu of the reinstatement. Management has not been able to dispute the findings rendered by the Civil Court in the judgment. However, even in those proceedings also, the plea of entering into of the alleged agreement had not been taken. Since the Management failed to produce the record of termination, the salary register and attendance register, adverse inference is liable to be drawn against the management. Nothing prevented Management to bring on record material to show that the name of the petitioner-workman was not shown in their record. However in the absence of the production of the record, Labour Court was enjoined upon the obligation to ponder on such fact and decide the controversy accordingly.

Since, the Labour Court failed to ponder upon this aspect, I deem it appropriate that the award of the Labour Court is liable to be set aside and the petitioner is entitled to reinstatement into services with continuity of service.

Mr. Sanjiv Gupta, learned counsel for the petitioner has been very fair to submit that his client is willing to forgo 50% of the back wages.

In view of the statement made by learned counsel for the petitioner, there shall be no order as to the awarding of the back wages.

Accordingly, the writ petition is allowed.

The order of the Labour Court is set aside. The petitioner shall be entitled to the reinstatement back into the service. In case, the petitioner

files an affidavit to the effect that during the pendency of the present writ petition, he was not gainfully be employed and Management shall pay a compensation of ₹30,000/- to the petitioner.

23.03.2015

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**(AMIT RAWAL)
JUDGE**