

CWP No.4498 of 2014

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

**CWP No.4498 of 2014
Date of decision:07.04.2015**

Usha Rani

...Petitioner

Versus

Presiding Officer and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Mr. Anant Kataria, AAG, Punjab.

Rakesh Kumar Jain, J.

The petitioner has challenged the validity of the award dated 02.08.2013, passed by the Industrial Tribunal, Patiala (here-in-after referred to as the "Tribunal") directing the respondents to compensate her with ₹7,000/- instead of reinstating her into service with full back wages.

According to the case of the petitioner, she joined respondents no.2 to 4 on 24.11.1997 as part time Class-IV employee and was drawing ₹63/- per day when her services were terminated on 31.12.1998. Initially, she had filed a Civil Suit against the order of termination which was dismissed on the ground that she was neither entitled to the declaration nor permanent injunction and the respondents no.2 to 4 cannot be restrained

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from implementing and giving effect to the memo dated 31.12.1998. She also remained unsuccessful in her appeal bearing Civil Appeal No.66 of 26.07.2000 which was dismissed on 15.02.2003. Thereafter, she served a demand notice on 30.06.2006 and on the failure of the reconciliation proceedings, her dispute was referred to the Labour Court under Section 2-A and Section 10(1)(c) of the Industrial Disputes Act, 1947 (here-in-after referred to as the “Act”).

The Tribunal has held that the petitioner has though worked as a part time Class IV employee but she had completed more than 240 days immediately before the date of her termination and at that time she was not paid any notice money or compensation which is the violation of Section 25-F of the Act. It was, however, observed that the petitioner was not the regular employee of respondents no.2 to 4 and proper procedure was not followed at the time of giving her employment, therefore, she was not entitled for reinstatement with full back wages and a sum of ₹7,000/- was found enough to compensate her.

At the time of notice of motion, the contention of learned counsel for the petitioner was that the compensation of ₹7,000/- is very paltry for one year of service. However, the reply has been filed by respondents no.2 to 4 justifying termination of the petitioner.

Learned counsel for the petitioner has submitted that since the respondents have not challenged the award of the Tribunal, therefore, they cannot argue on the merits. It is also submitted that violation of Section 25-F of the Act has been upheld by the Tribunal and the only issue to be

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decided is as to whether the petitioner is entitled for reinstatement with full back wages or the award of ₹7,000/- as compensation would be justifiable. In support of his submission, he has referred to a decision of this Court in the case of **Satto v. Head Mistress, Government Girls High School & others**, 2014(4) RSJ 511 to contend that a part time sweeper is a workman and if he had rendered 5 years of service which was terminated on account of joining of regular employee, without notice or retrenchment compensation, the compensation in lieu of reinstatement was found to be justified and 40% back wages and reinstatement was ordered.

Counsel for the State, however, has supported the award of the tribunal.

I have heard learned counsel for the parties and examined the available record.

The facts in **Satto's case (supra)** are different from the facts of the present case. In the present case, the petitioner was employed only for 280 days, whereas in **Satto's case (supra)**, she had worked for 4 years 11 months and 7 days continuously and was denied the relief of reinstatement on the ground that as per the instructions dated 30.12.1998/25.02.1999, a candidate recruited on part-time basis, through direct recruitment, should have at least 6 years of experience on the post before regularization. It was also found that the work in question continues and the Management has employed a person on regular basis, therefore, the Court had held that the compensation alone would not be sufficient because the petitioner in that case had completed almost 5 years of service and ordered for reinstatement

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with continuity of service. However, in the present case, not only the termination is of the year 1998 but also the petitioner had worked only for 280 days.

In the Full Bench judgment of this Court in the case of **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another**, LPA No.754 of 2010, decided on 10.10.2014, the following conclusions have been drawn:-

“(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into

consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has

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thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.

Thus, I am not inclined to disturb the finding of the Tribunal except for enhancing the amount of compensation from ₹7,000/- to ₹25,000/-.

The writ petition is accordingly allowed partly.

April 07, 2015
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(Rakesh Kumar Jain)
Judge