

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

Civil Writ Petition No.5580 of 2013

Date of decision: 27.11.2015

Gurnam Singh

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Arun Gosain, Advocate,
for the petitioner.

Mr.Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

A single post class-IV was advertised by the then Deputy Director, Animal Husbandry, Gurdaspur in a local newspaper called Chardikalan. As against one advertised post, 79 applicants were recruited illegally by the that Deputy Director, Animal Husbandry. Neither was any approval sought from the higher authorities to ratify the appointment nor were the selections made by any Committee approved by the department. This was the categorical stand taken by the management in its written statement filed before the Labour Court, Gurdaspur. The Labour Court after appreciating the evidence on record including the cross-examination of the

workman appearing as WW1 found that the workman was guilty of shifting

his stand as to joining at Sahawal in July, 1997 and the court *a quo* has held that the workman was either telling a lie or was bent upon suppressing facts regarding his engagement and whether it was brought to bear through the proper process of law. The labour court noticed that the engagement letter bears a special number which was not a routine office number. The Labour Court accepted the standpoint that the appointment of the workman was not genuine and was a result of an entry to service through the back door. The appointment was not approved by the Government at any time on the public post. The workman in his cross-examination was hard pressed to name even the newspaper from where he learnt of the offer of appointment and under which he was offered employment to public service albeit on a Class IV post. Only one post of Water Carrier-cum-Safai Sewak was advertised as born by the testimony of RW1. It is clear that the appointment was *de hors* the rules of service. Reinstating a person to a post on which he had no right or lien in terms of statutory rules of service governing the post, then all other considerations would recede in the background. In cases where the management takes the plea that the entry to service was illegal and ab-initio void being *de hors* the rules then in such cases it is a valuable consideration for the Labour Court to deny relief of reinstatement and I have no reason to disagree with the view taken by the Labour Court in the impugned award dated August 18, 2009 declining the reference. The Labour Court applied the law in **State of Punjab v. Lajpat Rai and another**; 2009 (2) RSJ 782; **Haryana State Electronics Development Corporation Limited v. Mamni**; 2006 (3) RSJ 130, **State of Haryana through Executive Engineer v. Ishwar Singh and others**; 2008 (3) SCT 789 and two

unreported judgments of this Court in CWP No.4280 of 2008; **Kuldip Singh v. Presiding Officer, Labour Court, Gurdaspur** and CWP No.18467 of 2002; **the Chief Engineer, R.S.D. Irrigation Works Punjab Shahpur Kandi Township and another v. Suresh Kumar and another** to arrive at the conclusion that the present was hardly a case where relief could be granted.

2. In a case of an illegal appointment such as in the present case, the Labour Court may not be incorrect in down-playing the provisions of Section 25-F of the Industrial Disputes Act, 1947 or to even view the case in terms of compensation in lieu of reinstatement. This is what the Labour Court has done while declining the relief of reinstatement and has granted compensation of ₹ 10000/- in lieu of reinstatement. The amount may sound meagre but at the same time, this Court should not put a premium on an illegal appointment by putting its imprimatur by considering an enhancement of compensation to any amount other than what is given by the Labour Court and, therefore, this Court is of the considered opinion that the award does not deserve to be tinkered with.

3. The initial appointment was the handiwork of the Deputy Director, Animal Husbandry, Gurdaspur exceeding his jurisdiction in making appointments *en masse* against one advertised post. Moreover, the appointments in excess of advertised vacancies are illegal in view of the ratio of law laid down in **Hoshiar Singh v. State of Haryana and others**; AIR 1993 SC 2606. I am, therefore, constrained to dismiss this petition as I do not finding any genuine and bonafide reason to accept the petition and set aside the award applying industrial law principles to the case in hand.

Where clear statutory rights are invaded and infringed, then the principles of Articles 14 and 16 of the Constitution of India come to the fore and cannot be down-played to result in mischief and granting relief would be wholly unjustified and improper and only add wasteful expenditure of taxpayer's money in case relief is granted as prayed for or to reinstate the petitioner to service with consequential relief.

4. No ground warranting interference is made out.
5. No merit. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

November 27, 2015

Paritosh Kumar