

CWP No.3696 of 2015

[1]

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

**CWP No.3696 of 2015
Date of decision:02.03.2015**

M/s Jotindra Steel & Tubes Ltd.

...Petitioner

Versus

Vishwanath Pandit and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Manoj Kumar Sood, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has challenged award of the Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad (here-in-after referred to as the “Tribunal”) dated 20.11.2014, specifically the relief part of it, as the learned counsel for the petitioner has argued that respondent no.1 should not have been reinstated with continuity in service and full back wages.

In short, respondent no.1 has alleged that he had joined the petitioner as a Turner w.e.f. 01.01.1997 and his last drawn salary was ₹7,000/- per month. He had taken leave from 12.11.2010 to 08.12.2010 and when he returned to his job on 09.12.2010, he was not allowed to work and his services were terminated.

On the other hand, the case of the petitioner is that respondent no.1 was appointed on 25.10.2006 as Turner and at the time when he left his

CWP No.3696 of 2015

[2]

job, he was getting ₹6,200/- per month as a consolidated salary. Respondent no.1 was allegedly an habitual absentee and at the time of leaving the job, he took ₹12,000/- on 20.11.2010 on the pretext of urgent need and assured that the amount would be repaid in installments of ₹2,000/- per month. Respondent no.1 remained absent from duty despite the letters issued by the management to resume his work but he gave no reply.

The Tribunal decided issue no.1 against the petitioner, holding that the plea of absenteeism/abandonment of service by respondent no.1 is without any inquiry and evidence, therefore, the termination was illegal being without any compliance of Section 25-F of the Industrial Disputes Act, 1947 (here-in-after referred to as the “Act”). In view thereof, the reference has been answered in his favour holding him entitled to reinstatement with continuity in service and full back wages.

Counsel for the petitioner has argued that the Tribunal has erred in reinstating the respondent no.1 with continuity in service and full back wages though respondent no.1 could have been compensated with a lump sum amount and has relied upon a decision of the Supreme Court in the case of **Rajasthan Lalit Kala Academy v. Radhey Shyam**, 2009(1) RSJ 95, a Full Bench decision of this Court in the case of **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur and another**, 2014(4) S.C.T. 514 and a Division Bench decision of this Court in the case of **Divisional Forest Officer, Hisar and another v. Rajbir Singh and another**, 2009(3) RSJ

CWP No.3696 of 2015

[3]

627.

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

In **Rajasthan Lalit Kala Academy's case (supra)**, it was found by the Supreme Court that it was a long drawn litigation of 27 years as the service of the workman was terminated initially on 04.04.1981 and then on 31.01.1985 which was ultimately decided by the Apex Court on 11.07.2008. Therefore, in this background, it was held that instead of a direction for reinstatement with back wages, a sum of ₹3,00,000/- in lump sum should be paid to the workman by way of compensation. This judgment is, thus, not applicable to the facts and circumstances of the present case.

In **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur's case (supra)**, the question referred to the Full Bench was as to “whether the persons appointed on public posts without following proper procedure would be entitled for reinstatement in view of the violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 or in view of judgment of the Constitutional Bench in **Secretary, State of Karnataka and others v. Uma Devi and others**, 2006(2) S.C.T. 462, only the relief of compensation could be granted in such circumstances” and the following principles were laid down:-

- “(i) Keeping in view the recognized 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 as per 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 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.”

CWP No.3696 of 2015

[6]

The aforesaid judgment is also not applicable to this case because it has not been argued by the petitioner before the Tribunal that there is no post available with them in which respondent no.1 could be reinstated.

Lastly, in **Divisional Forest Officer, Hisar and another's case (supra)**, it was held that the workman had worked on daily wages intermittently, therefore, he was not entitled for reinstatement and it was deemed appropriate to award him lump sum amount of compensation. This judgment is also not applicable to the facts and circumstances of the present case.

In view of the aforesaid discussion, I do not find any error on the part of the Tribunal in holding respondent no.1 entitled to reinstatement with continuity in service and full back wages.

Consequently, the present writ petition is hereby dismissed being denuded of any merit.

March 02, 2015
vinod*

(**Rakesh Kumar Jain**)
Judge