

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Letters Patent Appeal No:398-2015(O&M)

Date of Decision: April 21, 2015

Amandeep Singh

.....Appellant

versus

Presiding Officer, Industrial Tribunal,  
Amritsar and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S.SARON**  
**HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present Mr. Jasbir Mor, Advocate for the appellant.

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**S.S.SARON, J.**

This appeal has been filed by the appellant Amandeep Singh against the order dated 02.12.2014, passed by the learned Single Judge, whereby the petition filed by the appellant seeking quashing of the award dated 02.12.2014 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal, Amritsar, by which the reference had been answered against him has been dismissed.

Resolution No. 30 dated 26.05.2001 (Annexure P-2) was passed by the Executive Engineer Panchayat Samiti Tarsika, District Amritsar, whereby it was proposed that keeping in view the public interest, the appellant be appointed as a Tax Collector. The said Resolution was sent to the Director Rural Development and Panchayat Department, Chandigarh for necessary approval.

The approval was granted by the Deputy Secretary Punjab

Government Rural Development & Panchayat Department on 20.12.2001. In consequence thereof, the appellant joined as a Tax Collector in the office of Executive Officer Panchayat Samiti, Tarsika on 21.12.2001. He worked as Tax Collector upto 28.02.2002 when his services were dispensed with.

Against the said termination of the service of the appellant, he filed CWP-6712-2002 in this Court which was dismissed on 30.04.2002 with the direction to the respondent authority that in case they fill up the vacancy, the process of selection shall start within three months from the receipt of a copy of the order and the petitioner (now appellant) shall be entitled to compete in the regular selection.

Thereafter, the petitioner served a demand notice on 07.03.2003 claiming re-instatment with all consequential benefits. The conciliation proceedings remained unsuccessful and a reference was made to the Labour Court, Amritsar on 30.03.2006. The Presiding Officer, Industrial Tribunal, Amritsar in terms of its award dated 01.08.2011 held that the appellant had failed to prove that he served from 26.05.2001 to 28.02.2002. Infact, he joined on 21.12.2001 and his services were terminated on 28.01.2002 which was about 38/39 days only. Therefore, the reference was answered against the appellant and in favour of the Management.

The appellant aggrieved against the award dated 01.08.2011 of the Presiding Officer, Industrial Tribunal, Amritsar filed Civil Writ Petition No. 19367 of 2011 in this Court, which has

been dismissed by the impugned order dated 02.12.2014 passed by the learned Single Judge. The learned Single Judge held that the appellant had served only for 38/39 days and, therefore, the Labour Court stands denuded of its jurisdiction to decide the case on merits. Otherwise, the Labour Court could be blamed of usurping the jurisdiction when none existed.

Aggrieved against the same, the appellant has filed the present appeal along with CM No. 773-LPA-2015 seeking condonation of 23 days delay in filing the appeal. For the reasons stated in the Civil Misc. Application which is supported by affidavit of Sh.Balsher, Clerk of the learned counsel, who has now filed the appeal, delay of 23 days in filing the appeal is condoned. Besides, CM No.772-LPA-2015 has been filed seeking condonation of 7 days delay in filing the appeal beyond 40 days in re-filing the appeal. For the reasons stated in the Civil Misc. Application which is supported by affidavit of Sh.Balsher, Clerk of the learned counsel, who has now filed the appeal, delay of 7 days beyond 40 days in re-filing the appeal is condoned.

Learned counsel for the appellant has referred to the Resolution dated 26.05.2001 passed by the Executive Officer, Panchayat Samiti, Tarsika and endorsed by the District Development and Panchayat Officer, Amritsar and contended that the appointment of the appellant as Tax Collector should be taken from 26.05.2001. He has further referred to the case of Gurdip Singh , who is similarly placed as the appellant and he has been re-instated in service. Therefore, the appellant is also liable

to be reinstated. It is also emphasized that the management has not paid salary for the period from 26.05.2001 to 28.02.2002 to the workman.

We have given our thoughtful consideration to the contention of the learned counsel for the appellant and perused the record.

The Resolution dated 26.05.2001 on which strong reliance has been placed by the appellant is only in the nature of a recommendation to appoint the appellant temporarily as a Tax Collector. The said Resolution has been endorsed by the District Development and Panchayat Officer, Amritsar and it was sent to the Director for approval. The Resolution does not by itself constitute an appointment of the appellant as a Tax Collector. Infact the joining report dated 21.12.2001 submitted by the appellant shows that the appellant has stated that he was appointed as Tax Collector in compliance to order dated 20.12.2001 of the Deputy Secretary Punjab Government Rural Development and Panchayat Department, Chandigarh. Therefore, he was submitting his joining report on 21.12.2001. As such, it is quite evident that the appellant had not worked before his joining on 21.12.2001. His services were admittedly terminated on 28.02.2002. He had worked for 38/39 days only. In the circumstances, the learned Industrial Tribunal, Amritsar in its award dated 01.08.2011 rightly came to the conclusion that the appellant had not worked for 240 days and that his claim that he served from 26.05.2001 to 28.02.2002 stood falsified. The

learned Single Judge, in these circumstances, also rightly held that the appellant had served for only 38/39 days when his services were dispensed with.

The question regarding similar employee namely Gurdip Singh being appointed has been considered by the learned Industrial Tribunal in its award dated 01.08.2001. It was observed that the award passed in favour of said Gurdip Singh was *exparte* as the Management did not adduce any proof and its evidence was closed by order. In the present case, however, the case was hotly contested by both the parties, documents regarding appointment and attendance were duly proved by the Management and from it, it was found that the appellant had served for about 38/39 days only. Therefore, there is no parity in the case of the appellant with that of Gurdip Singh.

As regards salary which is claimed, the learned counsel for the appellant has referred to the award in which the averments made in the demand notice are mentioned. It has been mentioned that the Management had not paid salary for the period from 26.05.2001 to 28.02.2002. In this regard, it may be noticed that the appellant had admittedly not worked earlier to the date of his joining on 21.12.2001. Therefore, claim for salary for the period from 26.05.2001 to 20.12.2001 is, in any case, not tenable.

As regards the salary from 21.12.2001 to 28.02.2002, the appellant has not placed any material to show that the same was not paid to him. In fact this aspect was not the subject

matter of reference made to the Industrial Tribunal. It is even otherwise not shown to have been stated by the appellant during his deposition before the Labour Court that the salary for the said period i.e from 21/12/2001 to 28.02.2002 was not paid to him. In case, there is any dispute regarding the said salary, the appellant may urge the same before the Department in accordance with law. However, on the basis of material as placed on record, and in the absence of any reference to the learned Industrial Tribunal in this regard, it cannot *per se* be said that the appellant was not paid salary for the said period and he is entitled for the same.

Consequently, we find no merit in the appeal filed and the same is, accordingly, dismissed.

**(S. S. Saron)**  
**Judge**

**21.04.2015**  
mamta

**(Ramendra Jain)**  
**Judge**

*Note: Whether to be referred to Reporter: Yes/No*