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

**CWP No.4595 of 1993 (O&M)
Date of decision: March 28, 2016**

Municipal Committee, Karnal

.....Petitioner

Versus

Ramesh Chand and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S. Kundu, Advocate
for the petitioner.

Mr. R.K. Bansal, Advocate
for respondent No.1.

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari challenging the award dated 05.01.1993 (Annexure P-1).

Respondent No.1 had raised an Industrial dispute by serving a demand notice challenging his termination. The said dispute raised by respondent no.1 was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Rohtak by the appropriate Government.

The case of respondent No.1, in brief, was that he was appointed as Octroi Moharar on 31.03.1988 and his services had been terminated on 31.12.1988 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('Act' for short).

Petitioner-Management, in its written statement, averred that respondent No.1 was working with it on daily wage basis. Deputy Commissioner had appointed six Octroi Moharars for six months and the services of the said persons were terminated on completion of the said period as the vacancies were filled up through employment exchange.

On the pleadings of the parties, following issues were framed by the Industrial Tribunal-cum-Labour Court:-

- "1. Whether the impugned termination of services of workman is invalid? O.P.W.
2. Relief."

Parties led their evidence in support of their respective pleas.

The Industrial Tribunal-cum-Labour Court vide award dated 05.01.1993 answered the reference in favour of respondent No.1 and held that he was entitled for reinstatement in service with continuity of service and full back wages. Hence, the present petition by the petitioner-Management.

Learned counsel for the petitioner has submitted that respondent No.1 had worked with the petitioner-Management on daily wage basis. Learned counsel has further submitted that respondent No.1 had not worked for 240 days with the petitioner-Management and Section 25F of the Act was not applicable to the facts of the present case. Learned counsel has further submitted that the posts of Octroi Moharar were abolished in the year 1999. Hence, it was not

possible for the petitioner-Management to reinstate respondent No.1 as no post was available.

Learned counsel for respondent No.1, on the other hand has submitted that MW1 had admitted in his statement that respondent No.1 had worked for 240 days with the petitioner-Management. Since the provisions of Section 25F of the Act were not complied with by the petitioner-Management before terminating the services of respondent No.1, the impugned award was liable to be upheld.

In the present case, respondent No.1 had worked with the petitioner-Management from 31.03.1988 to 31.12.1988. As per MW1 Khajan Singh (his statement has been reproduced in Para 4 of the written statement), respondent No.1 had completed 240 days of service but with breaks. He also admitted that no notice was served on respondent No.1 before his termination as he was appointed on daily wage basis.

The question that requires consideration is that as respondent No.1 had worked with the petitioner-Management from 31.03.1988 to 31.12.1988 on daily wage basis with breaks, whether he is entitled for reinstatement in service especially in view of the stand taken by the petitioner-Management that no post was available for reinstatement of respondent No.1. It is the case of the petitioner-Management that post of Octroi Moharar has since been abolished.

In the case of ***Municipal Council, Dina Nagar, Tehsil***

& Distt. Gurdaspur Versus Presiding Officer, Labour Court, Gurdaspur and another, 2014(4) S.C.T. 514, the Full Bench of this Court has laid down the following principles:-

- (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 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."

Keeping in view the fact that it is not possible for the petitioner-Management to reinstate the petitioner as the post of Octroi Moharar has been abolished and considering the length of service of respondent No.1, it would be be just and expedient to grant compensation to respondent no.1 in lieu of reinstatement.

Accordingly, the impugned award dated 05.01.1993 (Annexure P-1) passed by the Industrial Tribunal-cum-Labour Court is modified to the extent that in lieu of reinstatement

with continuity of service and back-wages, respondent No.1 is held entitled to receive compensation. Petitioner-Management is directed to pay ₹50,000/- by way of lump-sum compensation to respondent No.1 within two months from the receipt of the certified copy of this order, in lieu of the relief granted by the Industrial Tribunal-cum-Labour Court, failing which, respondent No.1 will be entitled to receive the said amount with interest @ 9% per annum from the date of passing of this order till realisation. It is clarified that the wages already drawn by respondent No.1 under Section 17B of the Act would not be liable to be adjusted towards the compensation amount assessed by this Court.

Petition stands disposed of, accordingly.

**(SABINA)
JUDGE**

March 28, 2016
mahavir