

212-2

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

CWP No.12885 of 2012

Date of decision: February 11, 2016

Rajni

.....Petitioner

Versus

The Presiding Officer and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jagram Singh Cooner, Advocate
for the petitioner.

Mr. Sandeep Bhardwaj, Advocate
for respondent No.2.

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 13.12.2010 (Annexure P-1).

Petitioner had raised an Industrial dispute by serving a demand notice dated 18.09.2007 (Annexure P-2) challenging her termination. The appropriate Government referred the said dispute for adjudication to the Industrial Labour Court, Ambala.

The case of the petitioner, in brief, was that she had worked as a Peon/Aaya with the respondent-School from July 1991 upto 17.09.2007. Services of the petitioner were terminated in violation of the provisions of the Industrial Disputes Act, 1947 ('Act' for short).

Respondent-School in its written statement averred that the petitioner had absented from duty w.e.f. 15.09.2007. Petitioner was advised to join her duty vide registered letter dated 17.09.2007, but she had failed to join her duty. Thus, the petitioner had herself abandoned the job. During conciliation proceedings also, petitioner was asked to join her duty, but she had failed to do so.

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

- "1. Whether the termination of services of the workman is liable to be set aside being wrong, illegal, null and void etc. and the workman is entitled to be reinstated in service with full back wages and all the benefits including the continuity of service?OPW
2. Whether the claim statement is not maintainable in the present form?OPM
3. Whether the workman has no cause of action to file the present claim statement?OPM
4. Relief."

Parties led their evidence in support of their respective pleas.

The Labour Court vide its award dated 13.12.2010 declined the reference sought by the petitioner. Hence, the present petition by the petitioner-workman.

Learned counsel for the petitioner has submitted that the petitioner had worked for 16 years with the respondent-School and her services had been terminated without complying with the mandatory provisions of the Act.

The plea taken by the respondent-School that the petitioner had abandoned the job stood falsified from the fact that the petitioner had served demand notice on 18.09.2007. Petitioner was always ready and willing to join her duty, but had not been permitted to join her duty by the respondent-School.

Learned counsel for respondent No.2, on the other hand, has submitted that the petitioner had abandoned her services. In fact, during conciliation proceedings, petitioner was asked to join her duty, but she had failed to do so.

The case of the petitioner was that she had put in 16 years of service with the respondent-School, but her services had been terminated without complying with the mandatory provisions of the Act. A perusal of the claim statement (Annexure P-3) reveals that the petitioner had specifically pleaded that she had worked with the respondent-School on regular basis since July 1991 till the date of her termination, i.e. 17.09.2007. In this regard, Para-1 of the claim statement reads as under:-

“That the workman/claimant was appointed as Peon/Aaya by the management on regular basis w.e.f. July 1991 on a monthly salary of Rs.575/- per month. The workman/claimant has been performing her duties as a Peon/Aaya faithfully and sincerely without any complaint from any quarter and on account of her hard work and sincerity her salary was increased to Rs.1885/-. However, due to high prices, it was very difficult for the workman to have two times meal also for her family members from

the said meager salary. So, she requested the management to increase her salary at least to minimum wages. The management increased the salary of the workman/claimant to Rs.2825/- w.e.f. 1.7.2007 which was paid in the month of August, 2007 and assured the workman/claimant for enhancing her salary upto the minimum wages with annual increments w.e.f. 1.8.2007, but the management respondent with a malafide intention and ulterior motives terminated the services of the workman/claimant wrongly, illegally against the principles of natural justice as well as in violation of the provisions of the Industrial Disputes Act w.e.f. 17.09.2007 and when on 18.8.2007 in the morning the workman went to perform her duty she was not allowed even to enter the school premises what to say of joining and performing her duties and told that her services have been terminated w.e.f. 17.9.2007."

Reply (Annexure P-4) to the said paragraph reads as under:-

"That para no.1 of the claim statement is wrong, illegal and devoid of merits. It is emphatically denied that the petitioner has been performing the duties faithfully and sincerely, as alleged. In fact, the petitioner did not comply with the oral as well as written directions to resume the duty besides various messages were sent in this regard, but inspite of all best efforts by the answering respondent, the petitioner did not join the duty willfully without any intimation or information, as such has abandoned the services of her own. It is further denied that the services of the petitioner were terminated as alleged. It is

further denied that on 18.9.2007 the petitioner ever came to resume his/her duty and was not allowed to enter the school premises. The petitioner has cooked up a false and frivolous and after thought story to misuse the process of law, for which the petitioner is not entitled for any relief."

Thus, the respondent-School had not specifically denied the service period of the petitioner in the written statement. The case of the respondent-School was that the petitioner had abandoned her services. The said plea of the respondent-School stands belied from the fact that immediately after her termination, petitioner had raised an Industrial dispute by serving demand notice dated 18.09.2007 (Annexure P-2). In case, the petitioner had absented from duty, the respondent-School should have held an inquiry. However, in the present case, no inquiry was held against the petitioner.

Respondent-School had examined Sukhjinder Singh as MW1. A perusal of the statement of MW1 recorded before the Labour Court (shown during the course of arguments), reveals that MW1 had stated that the petitioner was engaged as Aaya on 01.07.1993 on daily wage as per requirement of job work and intermittently worked upto 12.09.2007. A question was put to the said witness in his cross-examination that was the respondent-School ready to allow the petitioner to join her duty. To this question, the witness answered that as the petitioner had left the job of her own and the post had been filled up by outsourcing, she could not be permitted to

join the duty as the post was not available.

Thus, although, in the written statement filed by the respondent-School, service period of the petitioner had not been specifically denied, but while appearing in the witness-box, MW1 Sukhjinder Singh had specifically stated that petitioner had worked with them from July 1991 upto 17.09.2007 on daily wages. The respondent-School had not produced on record any attendance or pay register/pay rolls to show that the petitioner had not worked for 240 days in the year preceding the date of termination of her services.

In the facts and circumstances of the present case, the Labour Court fell in error while holding that the petitioner had failed to establish that she had not worked with the respondent-School for 240 days in the last one year preceding her termination. Respondent-School had failed to establish by producing the record that the petitioner had not put in 240 days of service in the year preceding her termination. Thus, it is evident that the services of the petitioner were terminated without complying with the mandatory provisions of Section 25-F of the Act.

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."

Since the witness who had appeared on behalf of the respondent-School had stated that at this stage, they did not have any vacancy as the work was being got done through outsourcing, it would not be just and expedient to order the reinstatement of the petitioner and in lieu of reinstatement, it would be appropriate to award lump-sum compensation to the petitioner.

Accordingly, this petition is allowed. Impugned award passed by the Labour Court dated 13.12.2010 is set aside. Respondent No.2 is directed to pay compensation to the tune of ₹3,00,000/- to the petitioner within two months

from the date of receipt of certified copy of this order, failing which, petitioner would be entitled to receive the amount of compensation alongwith interest at the rate of 9% per annum from the date of passing of this order till realisation.

**(SABINA)
JUDGE**

February 11, 2016
mahavir