

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 1296 of 2012
Date of Decision: 22.1.2016.

Brahm Dass

.....Petitioner

Versus

Deputy Controller (F&A) and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. D.R.Sharma, Advocate
for the petitioner.

Mr. K.D.S.Sidhu, Addl. A.G., Punjab.

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 of impugned award dated 4.5.2011 (Annexure P-4).

Learned counsel for the petitioner has submitted that the Industrial Tribunal-cum-Labour Court had erred in awarding compensation to the petitioner. In fact, the petitioner was entitled to be granted relief of reinstatement with continuity of service and back-wages.

Learned State counsel, on the other hand, has opposed the petition and has submitted that the petitioner has been adequately compensated by the Industrial Tribunal-cum-Labour Court.

In the present case, petitioner had raised an industrial dispute by serving a demand notice dated 7.3.2005 challenging his

termination. The dispute was referred for adjudication by the appropriate Government to the Industrial Tribunal-cum-Labour Court.

The case of the petitioner was that he had joined the respondent-management as a Peon on 14.2.1997 on contract basis. The contract period of the petitioner was extended from time to time and his services were terminated vide letter dated 21.12.2004.

The case of the respondent management was that the petitioner had been relieved from services as his services were no longer required.

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

- "1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW*
- 2. Whether the reference is not maintainable ? OPM*
- 3. Relief."*

Parties led their evidence in support of their respective pleas.

The Industrial Tribunal-cum-Labour Court after appreciating the evidence led by the parties on record held that the services of the petitioner had been terminated in violation of the provisions of Section 25-F of the Act. Petitioner was ordered to be compensated by the Industrial Tribunal-cum-Labour Court instead of awarding him reinstatement.

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 the plea of the respondent management was that the services of the petitioner were no longer required, it was just and expedient to grant compensation to the petitioner in lieu of reinstatement. However, keeping in view the length of service rendered by the petitioner, the amount of compensation granted by the Industrial Tribunal-cum-Labour Court appears to be on the lower side.

Accordingly, the impugned award dated 4.5.2011 (Annexure P-4) is modified to the extent that amount of compensation awarded by the Industrial Tribunal-cum-Labour Court is enhanced from ₹ 80,000/- to ₹ 3,00,000/-. Respondent No. 2 is directed to make the payment of the said amount to the petitioner within two months from the receipt of certified copy of this order failing which the petitioner would be entitled to receive the amount of compensation along with interest at the rate of 9% per annum from the date of this order till realization.

Petition stands disposed of accordingly.

**(SABINA)
JUDGE**

January 22, 2016
Gurpreet