

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

CWP No.10873 of 2015

Date of decision: December 16, 2016

**Executive Engineer Public Health Engg. Division Sohna and others
...Petitioners**

Versus

Desh Raj and another ...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Anil Mehta, DAG, Haryana.

Mr. Major Sudhir Mittal, Advocate
for respondent No.1.

P.B. BAJANTHRI, J.(ORAL)

In the instant writ petition, petitioners have assailed the award passed by the Labour Court dated 12.08.2014.

Respondent No.1 was initially appointed as a Pump Attendant on 01.08.1995 and his services were terminated on 27.08.1997. The same was the subject matter before the Labour Court. Respondent No.1 raised industrial dispute. Labour Court refused to grant any relief. Consequently, writ petition was filed before this Court. This Court while deciding *CWP No.3399 of 2007* upheld the award passed by the Labour Court on 10.09.2008. Thereafter, the petitioner had a cause of action with reference to retrenchment order particularly in Para 4 of the order dated 27.08.1997 which reads as under:-

“In case of any future vacancy and department consider to fill up the same in your cadre, your case for re-employment shall be considered as per Clause-25 H of Industrial Dispute Act the time of proposal of any employment in your cadre by this office.”

Respondent No.1 came to know that the post of Pump Attendant was filled up in the year 2006, thus, he is entitled for

appointment to the post of Pump Operator pursuant to Para 4 of the retrenchment order dated 27.08.1997. He raised industrial dispute. The same was decided by the Industrial Tribunal-cum-Labour Court on 01.08.2014. While appreciating the violation of Section 25(H) of the ID Act on 12.09.2006 and 18.09.2006 by the petitioner-department, the Labour Court held that respondent No.1 is entitled to the benefit of Pump Attendant in Gurgaon Sub Division from 12.09.2006 on term appointment on consolidated salary of Rs.3,000/- per month along with all consequential benefits. In this background, whether respondent No.1 is entitled for back-wages or not, is the question.

Learned counsel for respondent No.1 submitted that respondent No.1 is entitled for back-wages for the reason that while retrenching his service on 27.08.1997, the post of Pump Assistant was existing and it was not filled up, thus, it was an illegal retrenchment. Consequently, he is entitled for the back-wages at least from 12.09.2006, the date on which the petitioners have violated Section 25-H of the ID Act.

On the other hand, learned counsel for the petitioners submitted that it is not a case of retrenchment and reinstatement on the authenticity of service and back-wages. Issue in the present case is relating to condition imposed in the retrenchment order dated 27.08.1997. Thus, respondent No.1 name has been considered as per Clause 25-H of the Industrial Dispute Act. Therefore, respondent No.1 is not entitled for the back-wages. In the present case, retrenchment has been upheld by this Court by the Labour Court as well as by this Court in *CWP No.3399 of 2007* on 10.09.2008. Therefore, respondent No.1 is not entitled for the backwages.

Heard learned counsel for the parties.

Question for consideration in the matter is respondent No.1 is entitled for back-wages or not? The issue in the present case is relating to violation of Section 25-H read with the condition imposed in the retrenchment order dated 27.08.1997 and not the illegal retrenchment so as to claim back-wages. Thus, the Labour Court has erred in granting back-wages benefit from 12.09.2006. During pendency of the litigation, respondent No.1 has been appointed on 14.09.2015.

In view of these facts and circumstances, Labour Court order dated 12.08.2014 is modified to the extent that the respondent is entitled to be appointed as a Pump Attendant in Gurgaon Sub Division prospectively.

Accordingly, the petition stands disposed of.

At this stage, learned counsel for respondent No.1 submitted that at the time of appointing the respondent on 14.09.2015, he has been paid wages from the date of the award till date of appointment on 14.09.2015. The same shall not be disturbed by the petitioner.

December 16, 2016

m. sharma

(P.B. BAJANTHRI)

JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No