

**CWP-16013-2013**

**[1]**

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**In the High Court of Punjab and Haryana at Chandigarh.**

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**Date of Decision:16.02.2016**

Ram Pal

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-Cum-Labour Court-  
1, Gurgaon, and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE SABINA**

Present: Mr. S.N. Yadav, Advocate,  
for the petitioner.

Mr. G.S. Wasu, Addl. A.G. Haryana.

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**SABINA, J.**

Petitioner has filed this petition under Article 226 of the Constitution of India challenging the award dated 01.01.2013 (Annexure P-4).

Petitioner had raised an industrial dispute by serving a demand notice challenging his termination. The said dispute was referred for adjudication to Labour Court, Gurgaon by the appropriate Government.

I have heard learned counsel for the parties and have gone through the record available on the file carefully.

Case of the petitioner, in brief, was that he was

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working with respondent No.2 as a Chowkidar w.e.f. 22.07.2001. However, services of the petitioner were terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('Act' for short).

Respondent No.2 in its written statement averred that the petitioner had not been appointed as a Chowkidar with them. Petitioner was engaged as a Labourer/Contractor as per the availability of work. All the dues had been paid to the petitioner. It is further pleaded that petitioner had not put in more than 240 days of service.

Respondent No.3 in its written statement averred that the petitioner had worked with the said-respondent from October 2004 to August 2006 as a link worker and has been paid his dues in this regard. Petitioner was dismissed from service w.e.f. 30.08.2006 as he was not interested to do the work properly. The community forestry project had ended on 31.03.2008.

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

- “1. Whether the services of workman were illegally terminated? If so, to what relief, he is entitled to? OPW
2. Whether the reference is not maintainable in the present form? OPM
3. Relief.”

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Parties led their evidence in support of their respective pleas.

Labour Court vide its award dated 01.01.2013 declined the reference sought by the petitioner. Hence the present petition by the petitioner-workman.

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

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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

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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.”

Case of respondent No.3 was that the petitioner had worked from October 2004 to August 2006 as a link worker, whereas the case of respondent No.2 was that the petitioner had worked from July 2001 to August 2002 for only 139 days.

Thus, it was evident that petitioner had worked for more than 240 days in the year preceding the date of his termination. In view of the written statement filed by respondent No.3, the project came to an end on 31.03.2008.

In these circumstances, although, the services of the petitioner had been terminated without complying with the mandatory provisions of Section 25-F of the Act but he could not be reinstated in service as the project had already ended in March 2008. Since, the services of the petitioner were terminated on 30.08.2006, whereas the project had ended on 31.03.2008, the provisions of Section 2(oo)(bb) of the Act were not applicable in the facts and circumstances of the present case.

In the present case, petitioner could not be ordered to be reinstated in service as the project had already ended in

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March 2008. Hence, in the facts and circumstances of the present case, petitioner was liable to be compensated. The learned Labour Court erred in declining the reference sought by the petitioner.

Accordingly, this petition is allowed. Award dated 01.01.2013 (Annexure P-4) is set aside. It is ordered that respondent No.3 shall pay compensation to the petitioner to the tune of ₹50,000/-. Respondent No.3 is further directed to pay the amount of compensation to the petitioner within two months from receipt of the certified copy of this order. In case the needful is not done within two months then the petitioner will be entitled to receive the amount of compensation along with interest @ 9% per annum from the date of this order till realization.

**February 16, 2016**  
*kapil*

**(SABINA)**  
**JUDGE**