

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 16287 of 2013
Date of Decision: 08.2.2016.**

M/s Career Institute of Technology
and Management

.....Petitioner

Versus

Dinesh Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rohit Ahuja, Advocate
for the petitioner.

Mr. Anil Shukla, 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 28.1.2013 (Annexure P-3) passed by respondent No. 2.

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

Case of respondent No. 1, in brief, was that he was appointed as a Peon with the petitioner on 5.5.2001. Respondent No. 1 had availed leave from 4.7.2002 to 7.7.2002 and when he reported for duty on 8.7.2002, he was asked to submit his resignation. When respondent No. 1 refused to do so, his services were orally terminated.

Petitioner, in its written statement, denied the

relationship of master and servant between the parties. The other contentions in the claim petition were denied.

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

- “1. Whether there exists any relationship of employer and employee between the parties ? OPW
2. As per the reference ? OPW
3. Relief.”

Respondent No. 1 led his evidence in support of his case.

The learned Tribunal vide the impugned award dated 28.1.2013 (Annexure P-3) held that respondent No. 1 was entitled to reinstatement with continuity of service and full back wages. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that, although, there was no relationship of master and servant between the petitioner and respondent No. 1, but the petitioner was ready to pay compensation to respondent No. 1 as no evidence had been led by the petitioner before the Labour Court. Learned counsel has further submitted that as per the case of respondent No. 1 himself, he had only worked with the petitioner for about one year. Hence, the Labour Court erred in awarding reinstatement in service to respondent No. 1 along with continuity in service and back wages. In support of his arguments, learned counsel for the petitioner has placed reliance on '**Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur Versus Presiding Officer, Labour Court, Gurdaspur and another**, 2014(4) S.C.T. 514, wherein the Full

Bench of this Court has held as under:-

“(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.”

Learned counsel for the petitioner has next placed reliance on '**Asst. Engineer, Rajasthan Dev. Corp. and another versus Gitam Singh, 2013 (5) SCC 136**', wherein it was held as under:-

“31. In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the appellant to the respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum.”

Learned counsel for respondent No. 1, on the other hand, has opposed the petition and has submitted that respondent No. 1 had been successful in establishing before the Labour Court

that he had worked for more than 240 days in the year preceding his termination. Services of respondent No. 1 had been terminated without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. Hence, the Labour Court had rightly ordered the reinstatement of respondent No. 1 with full back wages.

The case of respondent No. 1 was that he had worked with the petitioner from 5.5.2001 to 8.7.2002. Although, the case of the petitioner was that there was no relationship of master and servant between the parties but petitioner had not led any evidence in support of its case. Keeping in view the service period of respondent No. 1, the Labour Court should have awarded compensation to respondent No. 1 instead of reinstatement with full back wages.

Accordingly, the impugned award passed by the Labour Court dated 28.1.2013 (Annexure P-3) directing reinstatement of respondent No. 1 with continuity of service with full back wages, is set aside and instead thereof it is ordered that petitioner shall pay ₹ 50,000/- by way of compensation to respondent No. 1. Petitioner is directed to pay the amount of compensation to respondent No. 1 within two months from the receipt of the certified copy of this order failing which respondent No. 1 would be entitled to receive the amount of compensation along with interest at the rate of 9% per annum from the date of passing of this order till realization.

Petition stands disposed of accordingly.

**(SABINA)
JUDGE**

February 08, 2016
Gurpreet