

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 18872 of 2013
Date of Decision: 19.1.2016.

Dinesh Kumar

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Ramandeep Singh, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Addl. A.G. Haryana.

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 2.4.2013 (Annexure P-4).

Learned senior counsel for the petitioner has submitted that petitioner was appointed as Record Keeper by respondent No. 2 against existing vacancy after holding interview. The learned Industrial Tribunal-cum-Labour Court had erred in declining the relief of reinstatement to the petitioner after holding that the termination of services of the petitioner was in violation of provision of Section 25-F of the Industrial Disputes Act, 1947 ('Act' for short). Learned senior counsel has further submitted that in case the petitioner is awarded reinstatement, he forgoes his right for claim

of back wages.

Learned State counsel, on the other hand, has opposed the petition and has submitted that Industrial Tribunal-cum-Labour Court has rightly awarded compensation to the petitioner in lieu of reinstatement.

Petitioner had challenged his termination by raising an industrial dispute. The appropriate government referred the dispute for adjudication to the Industrial Tribunal-cum-Labour Court, Hisar.

Case of the petitioner, in brief, was that he was appointed as Record Keeper by respondent No. 2 with effect from 1.3.2007 on a salary of ₹ 3800/- per month against existing vacancy after holding interview. Petitioner had continuously worked on the said post upto 13.8.2009. Services of the petitioner had been terminated without complying with the mandatory provisions of the Act.

Respondent No. 2, in its written statement, denied the contentions in the claim petition put-forth by the petitioner.

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

- 1. Whether the termination of services of workman is legal or not? If not, to what relief he is entitled to ?*
- 2. Relief.*

Learned Industrial Tribunal-cum-Labour Court after going through the evidence on record gave a finding of fact that the petitioner had worked with respondent No. 2 from 1.3.2007 to 13.8.2009. It was further held that the services of the petitioner had been terminated in violation of provisions of Section 25-F of the

Act. It has further been held by the Industrial Tribunal-cum-Labour Court that appointment of the petitioner to the post was *de hors* of the rules as no applications were called from the general public to fill up the post nor the names of eligible candidates were called from the employment exchange. However, while granting the relief, the learned Industrial Tribunal-cum-Labour Court held that it would be just and expedient to award compensation to the petitioner to the tune of ₹ 45,000/-.

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.”

Thus, in the facts and circumstances of the present case, learned Industrial Tribunal-cum-Labour Court rightly came to the conclusion that it would be just and expedient to award compensation to the petitioner in lieu of reinstatement. However, the amount of compensation awarded by the Industrial Tribunal-cum-Labour Court is on the lower side. Keeping in view the length of service of the petitioner and the facts and circumstances of the present case, it would be just and expedient to enhance the amount of compensation liable to be paid to the petitioner.

Accordingly, the impugned award dated 2.4.2013 (Annexure P-4) is modified to the extent that amount of compensation awarded by the Industrial Tribunal-cum-Labour Court is enhanced from ₹ 45,000/- to ₹ 1,25,000/-. 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 the 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 19, 2016
Gurpreet