

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

201A

**CWP-3306-2011 (O&M)
Date of decision: 17.08.2016**

Mahabir Sharma

....Petitioner

Versus

The State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Naveen Sharma, Advocate for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

Mr. Subhash Ahuja, Advocate for respondents No.3 and 4.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, petitioner has questioned award dated 22.07.2010 vide Annexure P-8.

2. Brief facts of the case are that among others petitioner was appointed as Peon-cum-Chowkidar on 10.03.2000 by the respondent-bank. On 31.05.2004, the Managing Director-respondent bank directed the Branch Manager to relieve the petitioner vide Annexure P-3. Industrial Dispute was raised. On 22.07.2010 Labour Court held that petitioner is not entitled to reinstatement or back wages while assigning reasons that petitioner was only a daily wager. No post was advertised in the newspaper nor the workman

had filed application and further appointment to the petitioner among others was not approved by the competent authority so as to continue the petitioner or for reinstatement with consequential benefits.

3. Learned counsel for the petitioner submitted that the petitioner's services were dispensed without following due procedure like issuance of notice and it is in violation of various constitutional provisions including violation of Section 25F of the Industrial Disputes Act. In support of the petitioner's claim, he relied on the following decisions reported in:-

- i) 2015(6) SCC 321 titled as ***Ajaypal Singh versus Haryana Warehousing Corporation.***
- ii) 2010(3) SCC 637 titled as ***Krishan Singh versus Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)***
- iii) 2010(3) SCC 192 titled as ***Harjinder Singh versus Punjab State Warehousing Corporation .***

4. It was further submitted that in view of the above decisions of the Supreme Court, Labour Court Award in declining to reinstate, with continuity of service and back wages is illegal and arbitrary.

5. Per contra, learned counsel for the respondent vehemently contended that initial appointment of the petitioner and others was not in accordance with law. Therefore, in the year 2004 the respondent-Bank noticed that initial appointment of the petitioner was not in accordance with law like inviting applications and merit consideration etc. Therefore, there is no infirmity in the order of termination as well as award passed by the Labour Court.

6. Learned counsel for the respondent further submitted that in

identical matter this court while disposing of the CWP No. 17338 of 2013 wherein Labour Court has awarded compensation, the same has been enhanced to Rs.1 Lac. Learned counsel for the petitioner submitted that consent was given by the petitioner therefore, the said decision is not binding. On the other hand, it was submitted that petitioner is entitled to reinstatement with continuity of service and back wages. Learned counsel for the respondent relied on decisions of this Court passed in full Bench reported in 2015 (1) RSJ 642 titled as ***Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur versus Presiding Officer, Labour Court, Gurdaspur and another*** and decision of Supreme Court reported in 2014(3) SCT 661 titled as ***Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Ltd.*** to contend that finding of the Labour Court cannot be re-appreciated and if there are contrary relief, the same cannot confer jurisdiction of High Court. In the present case, Award passed by the Labour Court is contrary to each other in respect of other 3 persons are concerned.

7. Heard learned counsel for the parties.

8. Perusal of initial appointment order Annexure P1 dated 10.03.2000 reveals that it is ad hoc appointment since the permission granted by the Managing Director to Branch Manager to engage for the work of Peon-cum-Chowkidar on muster roll basis at DC rate till further order. The respondent Bank have noticed that initial appointment of the petitioner and others was not in accordance with the rules of recruitment or regulation governed by the post of Peon-cum-Chowkidar. Pick and choose method has been adopted by the then Managing Director while appointing

the petitioner and others therefore, it is only on ad hoc basis and which was not in accordance with law. Petitioner has no right to hold the post. In view of these facts and circumstances, the Managing Director has taken a positive decision to relieve the petitioner and 3 others who were appointed on ad hoc basis and which was not in accordance with law. Therefore, there is no infirmity. It was further noticed that Labour Court taken note of the fact that petitioner's appointment was not after due process of selection like advertising the post in the newspaper or upon competition. The then Managing Director adopted the pick and choose method. In other words, petitioner's appointment is contrary to constitutional provision like Articles 14 and 16 of the Constitution of India. Therefore, there is no infirmity in the Award passed by the Labour Court.

9. Learned counsel for the petitioner relied on 3 decisions. In the Ist decision, it was noticed that in that case selection and appointment was in accordance with Articles 14 and 16 of the Constitution of India therefore, the Supreme Court has directed for reinstatement. Hence, the present matter is distinguishable with the Supreme Court decision supra. The other two cases are also relating to appointing of daily wager wherein the initial appointment was in accordance with minimum procedure. Therefore, the said decisions are distinguishable. The respondent Bank is a cooperative Society which falls under Article 12 of the Constitution of India. Any post in the respondent-Bank is required to be notified before filling up the post should comply Articles 14 and 16 of the Constitution of India including reservation in selection and appointment. In the present case, the then

Managing Director of respondent-Bank side track the constitutional provisions while appointing the petitioner and others. Therefore, the petitioner has no right to seek for reinstatement, with continuity of service and back wages at the best he is entitled for compensation as granted in the identical matter passed in CWP No. 17338 of 2013. The compensation of Rs. 1 lac has been awarded in lieu of reinstatement. In the present case also, the petitioner is entitled to compensation of Rs. 1 lac. The said amount shall be paid to him within a period of 3 months from today failing which same would carry interest @ 9% per annum from today.

10. Petition stands disposed of.

17.08.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No