

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 3867 of 2011
Date of Decision: 20.1.2016.**

Parveen Kumar

.....Petitioner

Versus

Municipal Council, Gurdaspur and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S.Thakur, Advocate
for the petitioner.

Mr. A.K.Bazaz, Advocate
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India challenging the award dated 3.12.2010 (Annexure P-3).

Petitioner had raised an industrial dispute by serving a demand notice challenging his termination. The said dispute was referred for adjudication to Industrial Tribunal by the appropriate government. Case of the petitioner, in brief, was that he had been appointed on daily wage basis as a class-IV employee by the respondent management on 28.8.2000 and his services were terminated on 10.4.2003 in violation of mandatory provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('Act' for short).

Respondent-management in its written statement averred that the petitioner had been engaged on daily wage basis in

October 2000 for supervision of development project being carried out by the Municipal Council on D.C. Rates and had worked upto March 2003. Petitioner was relieved from his duties as the project against which he was engaged, was completed.

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

- “1. Whether the services of workman are covered u/s 2(oo) (bb) of the Act ?*
- 2. Whether the termination of services of the workman is justified and in order ?*
- 3. Relief.”*

Learned Industrial Tribunal vide the impugned award dated 3.12.2010 (Annexure P-3) dismissed the reference sought by the petitioner. Hence, the present petition by the petitioner-workman.

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

Petitioner while appearing in the witness box as WW-1 has deposed as per the contents of his claim petition. Respondent management examined RW-1 Umesh Aggarwal. The said witness in his examination-in-chief deposed that the petitioner had been engaged on daily wage basis in October 2000 for supervision of development works being carried out by the Municipal Council on D.C. approved rates and had worked upto March 2003. Petitioner had been engaged for specific work and for specific period. In his cross-examination, he deposed that he had no personal knowledge of the case. No notice was issued to the petitioner nor any retrenchment compensation was paid to him at the time of

termination of his services. Work was got done from the petitioner against the sanctioned project work. The said project work was still going on since March 2003 till date. He further deposed that the vacancy against which the petitioner was appointed, was still lying vacant. No appointment letter had been issued to the petitioner at the time of his employment.

Thus, in the present case, from the cross-examination of RW-1 it was evident that at the time of appointment of the petitioner, he was not issued any appointment letter whereby it was specified that he had been engaged for a particular period and against a particular project work. Although, RW-1 deposed that the vacancy against which the petitioner was employed, was still lying vacant but the said witness also deposed that the project work was going on since March 2003 till date.

Petitioner was working on daily wage basis as a Class-IV employee and had put in about 2½ years of service at the time of termination of his services. From the evidence on record, it was evident that the services of the petitioner had been terminated without complying with the mandatory provisions of Section 25-F of the Act. The learned Tribunal erred in holding that the petitioner had been unsuccessful in establishing that he had worked for more than 240 days in a year prior to termination of his services whereas the service period of the petitioner was duly admitted by the RW-1. Rather the case of the management was that petitioner had been engaged qua a particular project but no appointment letter issued to the petitioner in this regard had been proved on record. Although, in the present case, the services of the petitioner had been terminated without complying with the mandatory provisions

of Section 25-F of the Act but keeping in view that petitioner had raised a dispute by serving a demand notice on 17.5.2005 i.e. after two years of his termination, it would be just and expedient to award compensation to the petitioner in lieu of reinstatement.

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.”

Accordingly, it is ordered that respondent No. 1 shall pay compensation to the tune of ₹ 1,25,000/- to the petitioner in lieu of reinstatement. Respondent No. 1 is directed to make the payment of the said amount to the petitioner within three months from the receipt of certified copy of this 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 20, 2016
Gurpreet