

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18149 of 2014

Date of Decision:-22.11.2016.

Rakesh Kumar

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajesh Arora, Advocate for the petitioner.

Mr. Saurabh Girdhar, AAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of the award dated 1.7.2014 passed by the Labour Court. The petitioner was appointed as a Sweeper on part time basis at the DC Rate on 24.10.2001. Thereafter, he remained absent from 20.10.2004. The respondents issued a show cause notice on 30.10.2004. Since there was no reply to the show cause notice relating to remaining absent, the respondents proceeded to terminate the services of the petitioner on 29.11.2004. In respect of issuance of show cause notice and order of termination dated 29.11.2004 is disputed by the petitioner that the same were not communicated to him and it is also sent through ordinary post. At the same time, it is not marked document. Learned counsel for the petitioner

submitted that no inquiry has been held before ordering termination. Learned counsel for the petitioner in support of his claim for reinstatement with continuity of service with back wages relied on two decisions of this Court namely, (i) **2014 (4) SCT 195 (Satto Vs. Head Mistress, Government Girls High School & others)** and (ii) **2014 LabLR 31 (O.K. Play India Ltd. Vs. Raj Kumar)** to contend that inquiry is necessary and mandatory. In both the cases, this Court has directed for reinstatement with continuity of service and back wages of 40%.

2.) On the other hand, learned counsel for the respondents submitted that the petitioner remained absent as on 20.10.2004. Therefore, the respondents issued show cause notice seeking explanation of the petitioner as to why he remained absent on 30.10.2004. The same has not been replied by the petitioner. Consequently, the respondents have no go except terminating the services of the petitioner. Therefore, there is no infirmity in the order of the Labour Court. Learned counsel for the petitioner submitted that the Labour Court has held that there is a violation of Section 25-F. Further relief has been granted to the extent of granting compensation of ₹ 10,000/- only.

3.) Heard learned counsel for the parties.

4.) The petitioner is a part time Sweeper. Perusal of the dates and events, it is evident that the petitioner remained absent from 20.10.2004. Since no material has been placed to say that petitioner has been disallowed to work by the respondents. Learned counsel for the petitioner contended that on 30.11.2004, he raised a demand notice. Therefore, claim of the petitioner is in order and even claim is supported by Labour Court award

reinstatement continuity of service with back wages. The petitioner's services have been discontinued either remaining absent from 20.10.2004 or order of termination dated 29.11.2004. The decision cited by the petitioner do not assist the present case for the reasons that the petitioner has served only 3 years. In such circumstances, the Supreme Court in the case of **Bharat Sanchar Nigam Limited v. Man Singh, (2012) 1 SCC 558**, held that it is suffice to grant compensation instead of ordering reinstatement with continuity in service and back wages. Therefore, award of the Labour Court in respect of entitlement of compensation of ₹ 10,000/- is modified and the petitioner is entitled to compensation of ₹ 1,50,000/-. The modified compensation of ₹ 1,50,000/- shall be paid by the respondents within a period of three months failing which the petitioner is entitled to interest @ 9% per annum from today.

5.) Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

November 22, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.