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

**CWP No.19543 of 2014 (O&M)
Date of decision: March 01, 2016**

M/s S.R. Industries

.....Petitioner

Versus

Kishan Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ashwani Bakshi, Advocate
for the petitioner.

Ms. Sonia G. Singh, 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 31.03.2014 (Annexure P-9).

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

The case of respondent No.1, in brief, was that he was appointed as an Operator with the petitioner w.e.f. 01.06.2006 and his services were terminated on 15.06.2007 without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 ('Act' for short).

Petitioner in its written statement averred that the Unit had already been closed in the year 2009. It was further averred that respondent No.1 had not put in more than 240 days of service and had himself left the job on 15.06.2007.

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

- "1. Whether the services of workman were illegally terminated? If so as to what relief he is entitled to? OPW
2. Whether the respondent has closed its unit in the year 2009? If so, to what effect? OPM
3. Whether the present reference is not maintainable? OPM
4. Relief."

Parties led their evidence in support of their respective pleas. Thereafter, petitioner was proceeded *ex parte* vide order dated 03.03.2014.

The Industrial Tribunal-cum-Labour Court vide its award dated 31.03.2014 held that in lieu of reinstatement, respondent No.1 was entitled to receive wages w.e.f. 15.06.2007 to December 2009 at the rate of ₹9,900/- per month along with 12% interest per annum till payment and was further entitled to receive ₹10,000/- by way of lump-sum compensation on account of closure of the Unit. Hence, the present petition by the petitioner-Management.

Learned counsel for the petitioner has submitted that the Industrial Tribunal-cum-Labour Court has erred in awarding wages to respondent No.1 w.e.f. 15.06.2007 to

December 2009. In fact, the Workman had himself left the job and had failed to establish that he had put in more than 240 days of service with the petitioner.

Learned counsel for respondent No.1, on the other hand, has submitted that respondent No.1 had successfully established that he had put in more than 240 days of service prior to termination of his services. Respondent No.1 was liable to be paid wages till the Unit was closed.

In the present case, the case of respondent No.1 was that he had worked for more than one year with the petitioner when his services were terminated on 15.06.2007 without complying with the mandatory provisions of Section 25F of the Act. The case of the petitioner, on the other hand, was that respondent No.1 had himself left the job.

A perusal of cross-examination (Annexure P-6) of MW1 R.S. Gupta reveals that the said witness had admitted that the Workman had worked with their Unit for one year. MW1 further deposed that the work of respondent No.1 was satisfactory, but he used to remain absent from duty. He further stated that he had not brought any record regarding the absence of the petitioner as the Unit was lying closed.

Thus, it was established on record that respondent No.1 had put in more than one year of service with the petitioner. Petitioner had failed to establish that respondent No.1 had himself left the job as no record in this regard was proved on the file. Petitioner had failed to establish that the

services of respondent No.1 had been retrenched after complying with the provisions of Section 25F of the Act. Hence, the services of respondent No.1 had been illegally terminated.

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."

Since the Unit had closed down, the Industrial Tribunal-cum-Labour Court rightly came to the conclusion that the relief of reinstatement could not be granted to respondent

No.1. However, while dealing with the issue of relief, the

Industrial Tribunal-cum-Labour Court fell in error while allowing back-wages to respondent No.1 w.e.f. 15.06.2007 to December 2009. In fact, the Industrial Tribunal-cum-Labour Court should have granted lump-sum compensation to respondent No.1 keeping in view his service period. Respondent No.1 had rendered one year service with the petitioner. In these circumstances, the ends of justice would have been met, if respondent No.1 had been granted lump-sum compensation to the tune of ₹50,000/-.

Accordingly, the impugned award dated 31.03.2014 (Annexure P-9) is modified to the extent that in lieu of reinstatement, respondent No.1 is entitled to receive lump-sum compensation to the tune of ₹50,000/- instead of the relief granted by the Industrial Tribunal-cum-Labour Court. 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 will be entitled to receive the said amount with interest @ 9% per annum from the date of passing of this order till realisation.

Petition stands disposed of, accordingly.

**(SABINA)
JUDGE**

March 01, 2016
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