In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 5753 of 2011
Date of Decision: 01.4.2016.

Subhash Chander .....Petitioner

Versus

Divisional Forest Officer and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

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

Mr. Raj Kumar Makkad, DAG, Haryana.

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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 29.5.2009 (Annexure P-3) whereby relief of reinstatement was declined to him.

Petitioner had raised an industrial dispute by serving a demand notice challenging his termination. The dispute raised by the petitioner was referred for adjudication to the Labour Court-1, Gurgaon by the appropriate Government.

Labour Court vide the impugned award held that services of the petitioner had been illegally terminated. While granting the relief, the Labour Court held that the petitioner was entitled to receive ₹ 20,000/- by way of lump-sum compensation in lieu of reinstatement. Hence, the present petition by the petitioner-workman.

I have heard the learned counsel for the petitioner and

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the learned State counsel and have gone through the record available on the file carefully.

In the present case, the Labour Court after appreciating the evidence led by the parties on record, gave a finding of fact that the services of the petitioner had been terminated without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.

Full Bench of this Court in '***Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur Versus Presiding Officer, Labour Court, Gurdaspur and another,*** *2014(4) S.C.T. 514*, has held as under:-

> *"(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.*
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> *(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.*
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> *(iii) The right of reinstatement, however, is not an automatic right as such and while directing*

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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

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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."

Case of the respondent management was that the petitioner was engaged to work under Aravalli project plantation. The said project came to an end on 31.10.1999.

Since the petitioner was working on daily wage basis and the project had come to an end, the learned Labour Court rightly held that petitioner was liable to be awarded compensation in lieu of reinstatement. However, the amount of compensation assessed by the Labour Court is on a lower side. Petitioner had put in more than four years of service with the respondent management. In these circumstances, the amount of compensation is liable to be enhanced.

Accordingly, the impugned award passed by the Labour Court dated 29.5.2009 (Annexure P-1) is modified to the extent that petitioner is entitled to receive compensation to the tune of ₹ 2,00,000/- instead of ₹ 20,000/- (as awarded by the Labour Court). Respondents No. 1 and 2 are directed to pay the amount of compensation to the petitioner to the tune of ₹ 2,00,000/- within

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two months from the date of 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 passing of this order till realization.

Petition stands disposed of accordingly.

(SABINA)
JUDGE

April 01, 2016
Gurpreet

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