

CWP-25139-2013

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:17.03.2016

Amrik Singh

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Patiala and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Raj Kaushik, Advocate,
for the petitioner.

Mr. Neeraj Yadav, AAG, Punjab.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in nature of *certiorari* for quashing the impugned award dated 19.08.2013, whereby relief of reinstatement was declined to the petitioner.

I have heard learned counsel for the petitioner as well as the learned State counsel and have gone through the record available on the file carefully.

Petitioner had raised an industrial dispute by serving a demand notice dated 10.03.2003, challenging his termination. The said dispute was referred for adjudication to

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Industrial Tribunal, Patiala by the appropriate Government.

Industrial Tribunal vide award dated 19.08.2013 held that the services of the petitioner had been terminated in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947. While granting relief, the Industrial Tribunal held that it was a fit case where petitioner was liable to be awarded compensation in lieu of reinstatement as the reference had remained pending for about 9 years and petitioner had only worked from 26.10.1995 to 30.04.1998.

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

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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

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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.”

In the present case, the petitioner had worked with the respondents-management as a Chowkidar from 26.10.1995 to 30.04.1998. The demand notice was served by the petitioner challenging his termination on 10.03.2003. Keeping in view the fact that petitioner had raised the demand notice after a considerable delay and the fact that he had put in about 2½ years of service with the respondents-management, the learned Industrial Tribunal rightly came to the conclusion that it was a fit case where the petitioner was liable to be compensated in lieu of reinstatement. However, the Industrial Tribunal fell in error while allowing only ₹20,000/- by way of compensation. The amount of compensation awarded by the Industrial Tribunal is on a lower side and deserves to be enhanced keeping in view the length of service of the petitioner.

Accordingly, the impugned award of the Industrial

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Tribunal dated 19.08.2013 is modified to the extent that the petitioner is entitled to receive compensation to the tune of ₹1,25,000/- instead of ₹20,000/-. Respondent Nos.2 to 4 are directed to pay the amount of compensation to the petitioner within two months from the date of receipt of certified copy of this order failing which petitioner would be entitled to receive the said amount alongwith interest @ 9% per annum from the date of passing of this order till realization.

Petition stands disposed of, accordingly.

March 17, 2016
kapil

(SABINA)
JUDGE