

CWP-25426-2013

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:04.02.2016

Ashwani Kumar

...Petitioner

Versus

The Director, Local Government, Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. H.K. Brinda, Advocate,
for the petitioner.

Mr. Neeraj Yadav, AAG, Punjab.

Mr. R.S. Modi, Advocate,
for respondents No.2 and 3.

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 award dated 05.07.2013, whereby relief of reinstatement was declined to him and management was directed to pay compensation in lieu of reinstatement.

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

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Tribunal by the appropriate Government.

Case of the petitioner, in brief, was that he had worked with the respondents-management as Electrician Helper w.e.f 03.02.1999 to 25.03.2002. However, services of the petitioner were terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('Act' for short).

Respondents-management in their written statement denied the contentions in the claim petition. It was averred that there was no relationship of master and servant between the parties. Contractor had not been impleaded as a party. There was no post of Helper Electrician available with the Municipal Council.

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

- “1. *Whether there exists relationship of master and servant between the workman and respondent? OPP*
2. *Whether termination of services of the workman is proper and justified? OPR*
3. *Whether the reference is not maintainable? OPR*
4. *Whether the workman is entitled to get any relief from the respondent? OPP*
5. *Relief.”*

Parties led their evidence in support of their respective pleas.

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Industrial Tribunal vide award dated 05.07.2013 held that there existed relationship of master and servant between the parties. Learned Tribunal further held that petitioner had worked for more than 240 days in the year preceding the date of his termination and the services of the petitioner have been terminated in violation of provisions of Section 25F of the Act. While granting relief, the Tribunal has held that the petitioner was liable to be compensated in lieu of reinstatement as the reference had remained pending for 10 years.

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

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

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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

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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.

In the preset case, the Tribunal after appreciating the evidence led by the parties on record has held that the services of the petitioner had been terminated in violation of provisions of Section 25F of the Act. The case of the Municipal Council was that the petitioner had been appointed by the Contractor and the Municipal Council had handed over the work of maintenance/street lights to the private contractor.

Keeping in view the fact that the petitioner had worked on daily wage basis and the plea taken by the Municipal Council that the work of maintenance of street lights had been handed over to the Contractor (though not proved), the Tribunal had rightly held that in the facts and

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circumstances of the present case, petitioner was liable to be compensated by awarding him lump sum compensation in lieu of reinstatement. However, the amount of compensation i.e. ₹15,000/- awarded by the Tribunal is on a lower side keeping in view the fact that the petitioner had put in 3 years of service with the respondents-management. Keeping in view the service period of petitioner, it would be just and expedient to enhance the amount of compensation.

Accordingly, the award dated 05.07.2013 is modified to the extent that the petitioner would be entitled to receive compensation to the tune of ₹1,50,000/- instead of ₹15,000/-. Respondents No.2 and 3 are directed to make the payment of amount of compensation to the petitioner within two months from 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.

February 04, 2016
kapil

(SABINA)
JUDGE