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

CWP-25967-2013

Date of decision: 15.01.2016

Nikka Singh

..... Petitioner

VERSUS

The Presiding Officer 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 Section 226 of Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 11.10.2013 (Annexure P-3).

Petitioner has raised an industrial dispute by serving a demand notice challenging his termination. The dispute raised by the petitioner was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Patiala by the appropriate Government.

The Labour Court vide its impugned award dated 11.10.2013 held that the services of the petitioner has been terminated in violation of provisions of Section 25-F of the

Industrial Disputes Act, 1947 (Act in short). However, while granting the relief, the Labour Court held that the petitioner was not entitled to the relief for reinstatement but was awarded compensation to the tune of ₹ 15,000/-. Hence, the present petition filed by the petitioner-workman.

Learned counsel for the petitioner has submitted that the petitioner was liable to be reinstated in service as he had worked with the respondent-Management for a period of about 2 years and 8 months. Services of the petitioner had been terminated without complying with the mandatory provisions of Section 25-F of the Act.

On the other hand, learned State counsel has opposed the petition and has submitted that, in fact, the petitioner was not the employee of the respondents as he has been engaged by a contractor.

Learned Labour Court after going through the evidence led by the parties on record gave a finding of the fact that the petitioner had worked with the respondents No.2 and 3 from 03.01.2003 to 08.09.2005. The Labour Court has further held that the plea taken by the respondent-Management that the petitioner was not their employee could not be accepted. Learned Labour Court further held that the services of the petitioner has been terminated without complying with the provisions of Section 25-F of the Act. The said finding of the fact is not under challenge before this Court. The point for

consideration before this Court is as to whether the petitioner is entitled for his reinstatement with the respondent-Management with all consequential benefits or he is liable to be compensated.

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."

In the present case, the petitioner has averred that he has worked for about 2 years and 8 months on temporary/ad-hoc basis with respondent-Management and his services was terminated in September, 2005. Hence, the learned Labour Court rightly came to the conclusion that it would not be just an expedient to grant relief of reinstatement of the petitioner and the petitioner could be compensated by awarding compensation. However, while calculating the amount of compensation liable to be paid to the petitioner, the Labour Court has granted only ₹ 15,000/- by way of compensation. Keeping in view the service period of the petitioner and fact that the petitioner has been pursuing his case, it would be just an expedient to enhance amount of compensation.

Accordingly, the impugned award dated 11.10.2013 is modified to the extend that the petitioner would be entitled to

receive ₹ 1,30,000/- by way of compensation instead of ₹ 15,000/-.

Respondents No.2 and 3 are directed to pay the amount of compensation to the petitioner within 2 months from the receipt of the certified copy of this order, failing which the petitioner would be entitled to receive the said amount alongwith interest at the rate of ₹ 9% per annum from the date of passing of this order till realization.

January 15, 2016
Ramandeep Singh

**(SABINA)
JUDGE**