

207

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

CWP-9612-2011

Date of decision: 14.01.2016

Santosh Devi

..... Petitioner

VERSUS

Presiding Officer and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Arjun Atri, Advocate for
Mr. Ashish Gupta, Advocate for the petitioner.

Mr. R.P Singh, AAG, Haryana.

SABINA, J.

Petitioner has filed this petition challenging the impugned award dated 24.09.2009, Annexure P-1.

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, Gurgaon by the appropriate Government.

The case of the petitioner in brief was that she had joined the services of the respondents as Helper on 08.03.1996 and was not allowed to join her duty w.e.f. 01.08.1997. It was further the case of the petitioner that she had not been paid

wages w.e.f. 29.09.1996 to 01.08.1997 and for this relief she had moved a separate petition.

However, respondents in their written statement averred that the petitioner had joined the Zila Parishad w.e.f. 12.03.1996 for a period of 89 days. The appointment of the petitioner was made till the joining of a regular candidate. Petitioner was relieved from her duties on 08.06.1996. Thereafter, the petitioner was again appointed for a period of 89 days w.e.f. 01.07.1996 to 27.09.1996.

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

- (i) Whether the services of petitioner were illegally terminated by the mgt.? OPP
- (ii) Whether the respondent is not an industry under I.D. Act ? OPM
- (iii) Relief.

Parties led their evidence in support of their respective pleas.

Labour Court vide its impugned award dated 24.09.2009 held that the petitioner had worked for more than 240 days and her services had been terminated in violation of provision of Section 25 of the Act w.e.f. 01.09.1997. Since a period of more than 12 years had elapsed, the Labour Court held that it would be just an expedient to grant compensation to the petitioner in lieu of reinstatement.

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

In ***Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur Versus Presiding Officer, Labour Court, Gurdaspur and another***, 2014(4) S.C.T. 514, 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 had worked with respondents with breaks for more than 240 days preceding his termination. The said finding of fact arrived at by the Labour Court is not under challenge in this petition. Since in the present case, the petitioner had worked with respondents for about one year, the learned Labour Court rightly came to the conclusion that as more than 12 years had elapsed after the termination of the services of the petitioner it would be just an expedient to grant her compensation in lieu of reinstatement.

The Labour Court has awarded ₹ 10,000/- by way of compensation to the petitioner. The said amount is on a lower side as the petitioner had been pursuing her case for 12 years.

Accordingly, the impugned award is modified to the extent that the petitioner would be entitled to receive ₹ 50,000/-

by way of compensation instead of ₹ 10,000/- as allowed by the Labour Court.

Respondents No.2 and 3 are directed to pay the amount of compensation to the petitioner within two 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.

Petition stands disposed of accordingly.

January 14, 2016
Ramandeep Singh

**(SABINA)
JUDGE**