

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 24496 of 2015

Date of Decision: 19.1.2016.

Vinod Kumar

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.K.Bhardwaj, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Addl. A.G. Haryana.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing of impugned award dated 28.5.2010 (Annexure P-4).

Learned counsel for the petitioner has submitted that the Industrial Tribunal-cum-Labour Court had erred in not awarding reinstatement to the petitioner with continuity of service after holding that the services of the petitioner had been terminated in violation of Section 25-F of the Industrial Disputes Act, 1947 ('Act' for short).

Learned State counsel, on the other hand, has opposed the petition and has submitted that Industrial Tribunal-cum-Labour Court has rightly awarded compensation to the petitioner in lieu of reinstatement.

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

Parties led their evidence in support of their respective pleas. The learned Industrial Tribunal-cum-Labour Court after appreciating the evidence led by the parties on record gave a finding of fact that the petitioner had worked for 112 days in the year 1996, 111 days in the year 1997, 61 days in the year 1998 and 275 days in the year 1999. Thus, in the present case, petitioner had worked for more than 240 days in preceding 12 months of his termination.

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.”

Keeping in view the facts and circumstances of the present case, the learned Industrial Tribunal-cum-Labour Court rightly came to the conclusion that in lieu of reinstatement, it would be just and expedient to award compensation to the petitioner. However, the amount of compensation awarded by the Industrial Tribunal-cum-Labour Court is on the lower side. Hence, in the facts and circumstances of the present case, it would be just and expedient to enhance the amount of compensation.

Accordingly, the impugned award dated 28.5.2010 (Annexure P-4) is modified to the extent that amount of compensation awarded by the Industrial Tribunal-cum-Labour Court is enhanced from ₹ 12,000/- to ₹ 50,000/-. Respondents No. 2 and 3 are directed to make the payment of the said amount to the petitioner within two months from the receipt of certified copy of the 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 this order till realization.

Petition stands disposed of accordingly.

(SABINA)
JUDGE

January 19, 2016
Gurpreet