

In the High Court of Punjab and Haryana at Chandigarh.

CWP-25836-2015 (O&M)

Date of Decision: 11.01.2016

Yashpal

...Petitioner

Versus

Presiding officer, Industrial Tribunal cum labour court,
Chandigarh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Suneet Singh Deol, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition under article 226 of the Constitution of India challenging the award dated 15.07.2014.

Learned counsel for the petitioner has submitted that services of the petitioner had been terminated in violation of the mandatory provisions of the Industrial Dispute Act. Hence, petitioner was liable to be reinstated in service with continuity of services and full back wages.

Petitioner raised an industrial dispute challenging his termination by respondent No.2. The dispute raised by the petitioner was referred for adjudication to Industrial Tribunal-Cum-Labour Court, Union Territory, Chandigarh by the appropriate Government.

The case of the petitioner was that he was appointed as a Sweeper with respondent No.2 from October 2003 to 15.04.2004 and continued working with respondent No.2 upto April 2005. Services of the petitioner had been terminated without complying with the provisions of the Act.

The case of respondent No.2, in its written statement, was that the petitioner had been initially engaged as a Sweeper in September 2003 on contract basis in pursuance to the sanction accorded by the Municipal Commissioner, on 08.08.2003 to engage 250 labourers on contract basis for proper cleanliness in Municipal Corporation area of Union Territory, Chandigarh. The expenditure was to be incurred out of the head 'grant-in-aid', Municipal Corporation, Chandigarh. Sanction for extension of the said job was extended from time to time. Thereafter, vide order dated 10.03.2005, the entire work and process of recruiting manpower was outsourced.

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

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW
2. Relief.

The learned Presiding Officer on the basis of the evidence led by the parties held that the services of the

petitioner had been terminated without following the mandatory provisions of Section 25 of the Act as the petitioner had completed more than 240 days. While granting relief, the learned Presiding Officer held that ends of justice would be met if petitioner was paid compensation to the tune ₹50,000/-

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 had worked on contract basis from October 2003 to April 2005. Thus, the petitioner had completed more than 240 days of service and his services were discontinued without payment of compensation as envisaged under Section 25F of the Act. Since, the case of respondent No.2 was that now the project of cleanliness has been out sourced, the Industrial Tribunal-Cum-Labour Court rightly came to the conclusion that instead of awarding reinstatement to the petitioner, the ends of justice would be met if he was paid compensation. While assessing the amount of compensation, it has been noticed by the learned Industrial Tribunal-Cum-Labour Court that the petitioner had failed to specify the last drawn wages. In the facts and circumstances of the present case, the amount of compensation assessed by the learned Industrial Tribunal-Cum-Labour Court does not require any interference by this Court.

Dismissed.

January 11, 2016
kapil

(SABINA)
JUDGE