

In the High Court of Punjab and Haryana at Chandigarh.

CWP-5103-2014

Date of Decision:04.02.2016

Anita Rani

...Petitioner

Versus

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

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Sharmila Sharma, Advocate,
for the petitioner.

Mr. S.S. Behl, Advocate,
for the respondent.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in nature of certiorari quashing the impugned award dated 14.10.2013 (Annexure P-4), whereby, relief of reinstatement was declined to her and in lieu thereof compensation was awarded by the Industrial Tribunal.

Petitioner had raised an industrial dispute challenging her termination. The appropriate Government referred the dispute for adjudication to the Industrial Tribunal.

Case of the petitioner, in brief, was that she had worked with the respondents as a Clerk from 23.01.1996 to

05.06.1998. Services of the petitioner had been terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('Act' for short).

Management in their written statement averred that the petitioner had been employed purely on temporary basis as a daily wage clerk on 30.01.1996.

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

- “1. Whether the services of Anita Rani were terminated illegally by the respondent? OPW*
- 2. Whether the reference is not maintainable in the light of preliminary objections taken by the management in its written statement? OPM*
- 3. Relief.”*

Parties led their evidence in support of their respective pleas.

The Tribunal after appreciating the evidence led by the parties on record has held that it was the conceded case by the representatives of both the parties that the petitioner had not completed 240 days of services in the year preceding the date of her termination. However, juniors had been retained by the management at the time of termination of services of the petitioner and fresh appointments had also been made. Thus, the services of the petitioner had been terminated in violation of provisions of Section 25-G and 25-H of the Act. While granting relief it has been noticed by the

Tribunal that petitioner had served the demand notice on 11.04.2005 challenging her termination on 05.06.1998. Keeping in view the said fact and the fact that the reference had remained pending for 7 years, the Tribunal ordered that the compensation to the tune of ₹10,000/- be paid to the petitioner.

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 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 reasons for declining the relief of reinstatement by the Tribunal are sound reasons as the petitioner had raised the dispute after about 7 years. However, the amount of compensation awarded by the Tribunal is on a lower side.

Accordingly, the award dated 14.10.2013 is modified to the extent that the petitioner would be entitled to receive compensation to the tune of ₹25,000/- in lieu of ₹10,000/- Respondents No.2 and 3 are directed to make the payment of compensation to the petitioner within two months from the date of 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