

164

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

CWP No.3140 of 2016

Date of decision: February 16, 2016

The District Education Officer and others

.....Petitioners

Versus

Satbir and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Gagandeep Singh Wasu, Addl. AG Haryana.

SABINA, J

Petitioners have filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari challenging the award dated 15.10.2015 (Annexure P-6).

Respondent No.1 had raised an Industrial dispute by serving a demand notice challenging his termination. The appropriate Government referred the said dispute for adjudication to the Labour Court, Faridabad.

The case of respondent No.1, in brief, was that he had worked with the petitioner-Management from the year 1986 upto 12.10.2010. Although, respondent No.1 had put in 16 years of service with the petitioners, but vide letter dated 12.10.2010, respondent No.1 was informed that his services could not be regularised. Thereafter, the services of respondent No.1 were terminated in violation of the

provisions of Industrial Disputes Act, 1948 ('Act' for short).

Petitioners in their written statement averred that respondent No.1 was engaged as a part-time Sweeper vide letter dated 09.11.1995 on D.C. rates on year to year basis and continued working upto 31.03.2010. The case of respondent No.1 was sent for regularization, but it was rejected on the ground that he had not completed six years of service.

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

- "1. Whether the services of Satbir are terminated illegally or if so then to what relief the claimant is entitled?OPW
2. Relief."

Parties led their evidence in support of their respective pleas.

The Labour Court vide its award dated 15.10.2015 after appreciating the evidence led by the parties on record gave a finding of fact that respondent No.1 had worked as a part-time Sweeper with the petitioners for more than 16 years. The services of respondent No.1 were terminated without complying with the provisions of Section 25F of the Act. The Labour Court ordered reinstatement of respondent No.1 with 50% back-wages. Hence, the present petition by the petitioners.

Learned State counsel has submitted that the

Labour Court has erred in awarding reinstatement to respondent No.1, whereas, it was a fit case for awarding compensation in lieu of reinstatement. In support of his arguments, learned State counsel has placed reliance on *Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur Versus Presiding Officer, Labour Court, Gurdaspur and another, 2014(4) S.C.T. 514*, wherein, 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, admittedly, respondent No.1 had worked with the petitioners as a part-time Sweeper-cum-Chowkidar. The Labour Court after appreciating the evidence led by the parties on record has given a finding of fact that respondent No.1 had rendered 16 years of service with the petitioners. The services of respondent No.1 were terminated without complying with the provisions of Section 25F of the Act. Keeping in view the length of service rendered by respondent No.1 with the petitioners, the learned Labour Court rightly held that respondent No.1 was entitled for reinstatement in service. In the present case, the Workman was not liable to be awarded compensation in lieu of reinstatement as he had rendered more than 16 years of service with the petitioners. Hence, the judgment relied upon by the learned State counsel fails to advance the case of the petitioners.

The award passed by the Labour Court is just and legal and calls for no interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

Dismissed.

**(SABINA)
JUDGE**

February 16, 2016
mahavir