

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 59 of 2014
Date of Decision: 29.2.2016.**

Ajmer Singh

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court-I, Gurgaon and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Abha Rathore, Advocate
for the petitioner.

Mr. Saroj Malakar, Advocate
for respondent No. 2.

SABINA, J.

Petitioner has filed this petition under Article 226 of Constitution of India challenging the part of the award dated 18.9.2013 (Annexure P-1) whereby relief of reinstatement was declined to him.

Petitioner had raised an industrial dispute by serving a demand notice challenging his termination. Dispute raised by the petitioner was referred for adjudication to Labour Court-I, Gurgaon by the appropriate Government.

Case of the petitioner, in brief, was that he was working with respondent No. 2 as a Welder from 5.5.1999 to 21.6.2000. Services of the petitioner were terminated without complying with the mandatory provisions of Industrial Disputes Act, 1947 ('Act' for short).

Respondent No. 2, in its written statement averred that

the petitioner had been employed by contractor M/s R.K. and Company. It was averred that there existed no relationship of master and servant between the parties.

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

- “1. Whether there existed any relationship of employer and employee between the parties ? OPW*
- 2. If issue no. 1 is proved in affirmative, whether the termination of services of the workman is justified and in order? If not, to what relief, he is entitled to ? OPW*
- 3. Whether the claim statement is bad in view of preliminary objection no. 4? If so, its effect ? OPM*
- 4. Relief.”*

Parties led their evidence in support of their respective pleas.

Labour Court vide award dated 18.9.2013 held that services of the petitioner had been terminated in violation of provisions of Section 25-F of the Act. However, while granting the relief, the Labour Court held that the petitioner was entitled to receive lump-sum compensation in lieu of reinstatement.

Learned counsel for the petitioner has submitted that the petitioner undertakes to forego the claim of back-wages. Petitioner was liable to be reinstated in service as his services had been terminated in violation of provisions of Section 25-F of the Act. The Labour Court had disallowed the relief of reinstatement on imaginary grounds.

Learned counsel for respondent No. 2, on the other

hand, has opposed the petition and has submitted that in the facts and circumstances of the present case, petitioner was not entitled for the relief of reinstatement. The discretion exercised by the Labour Court while allowing compensation to the petitioner in lieu of reinstatement was justified. Respondent No. 2 has already deposited the amount of compensation in terms of the award passed by the Labour Court.

In the present case, the Labour Court after going through the evidence led by the parties on record gave the finding that the services of the petitioner had been terminated without complying with the mandatory provisions of Section 25-F of the Act. Labour Court further held that the name of the petitioner had been kept on the rolls of the contractor to deny the legal right of the petitioner. It has also been noticed by the Labour Court that the contractor was not having a valid licence from November 1999. Rather, the contractor was having a licence from 1.1.2000 to 31.12.2003. Petitioner had worked with the respondent management from 5.5.1999 to 21.6.2000. Thus, the petitioner was already working with respondent No. 2 before the contractor got the licence.

So far as the present case is concerned, the controversy involved is as to whether the petitioner was entitled for the relief of reinstatement or was liable to be compensated in lieu of reinstatement. The Labour Court while declining the relief of reinstatement has held that the petitioner was fighting his case for the last 12 years and during the intervening period technology had undergone a sea change and he was not familiar with the new technology. Hence, the Labour Court held that in lieu of

reinstatement, petitioner was liable to be compensated by awarding him lump-sum compensation to the tune of ₹ 50,000/-. However, the opinion of the Labour Court that the petitioner was not familiar with the new technology was without any basis. There is nothing on record to suggest that the petitioner would not be able to perform the duties of a Welder. The certificates issued by Maruti Udyog Limited qua training period and the certificate that the petitioner had been engaged as an apprentice in the trade of Turner were duly proved on record. Since in the present case, the Labour Court has disallowed the relief of reinstatement on imaginary grounds, the impugned award of the Labour Court to the extent whereby relief of reinstatement has been declined to the petitioner, is liable to be set aside. Petitioner has given up the claim for back-wages.

Accordingly, the award dated 18.9.2013 (Annexure P-1) passed by the Labour Court is modified to the extent that petitioner is entitled for reinstatement with all consequential benefits but without back-wages. Respondent No. 2 would be entitled to seek refund of the amount deposited by it with the executing authority in pursuance to the award Annexure P-1.

Petition stands disposed of accordingly.

**(SABINA)
JUDGE**

February 29, 2016
Gurpreet