

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7531 of 2013

Date of Decision:- 16.08.2016.

Brij Pal Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajnish Gupta, Advocate for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

- 1.) The petitioner has assailed the award dated 26.10.2012.
- 2.) The petitioner is stated to have been appointed on *ad hoc* basis against clerical post in the office of Advocate General, Haryana on 12.8.1999. He has worked as such till 24.6.2002. His services have been orally terminated on 24.6.2002. He had submitted representation to the Advocate General. The same was not considered. Consequently, he filed a writ petition before this Court. The same was dismissed as withdrawn on 2.7.2002. On 14.11.2005, the petitioner raised a demand notice. The Labour Court framed the following issues:-

“(1) Whether the services of the workman were terminated by the management, if so, to what effect and to what relief he is entitled to, if any? OPW

(2) Whether the reference is not maintainable? OPM

(3) Whether the reference is bad on the ground of delay and laches? OPM

(4) Whether the workman has stopped himself by his own act and conduct to raise the claim as referred? OPM

(5) Relief.”

3.) The Labour Court gave a finding that there is a violation of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). However, an observation has been made that petitioner's recruitment is not in accordance with the recruitment rules. He was appointed only for 89 days and he was appointed on daily wage basis during the intervening period. Since the petitioner worked from 12.8.1999 to 24.6.2002 and, thereafter, he raised demand notice for the first time on 14.11.2005. Therefore, the Labour Court awarded compensation of ₹ 50,000/-. Feeling aggrieved by the award, the petitioner presented this writ petition.

4.) Learned counsel for the petitioner submitted that finding of the Labour Court is in favour of the petitioner that there is a violation of Section 25-F of the 1947 Act. However, there is denial of reinstatement, continuity of service and back wages. It was further contended that similarly situated persons who were appointed on *ad hoc* basis in the year 1999, their services have been continued and even their services have been regularized. Therefore, the petitioner is also entitled for reinstatement with back wages. In support of the petitioner's claim, he cited decision of the Apex Court reported in ***2011(6) SCC 584 (Devinder Singh Vs. Municipal Council, Sanaur)*** and another decision reported in ***2010(3) SLR 663 (Anoop Sharma Vs. Executive Engineer Public Health Division No.1, Panipat [Haryana])***. In both the cases, there is finding that there is a violation of

Section 25-F of the the 1947 Act. Therefore, Supreme Court has ordered that they are entitled for reinstatement.

5.) Per contra, learned counsel for the respondents submitted that petitioner has served on *ad hoc* basis from 12.8.1999 to 24.6.2002 which is less than three years. Therefore, rightly Labour Court has awarded only compensation of ₹ 50,000/-. It was further argued that conduct of the petitioner that he kept quiet from the year 2002 to 2005 in respect of agitating his claim as is evident from the date of demand notice dated 14.11.2005. In view of this, the petitioner is not entitled for reinstatement, continuity of service and back wages.

6.) Heard learned counsel for the parties.

7.) Admittedly petitioner has worked from 12.8.1999 to 24.6.2002 i.e. less than three years. Thereafter, he did not agitate the matter from 2.7.2002, the date on which he withdrew his writ petition filed before this Court to 14.11.2005, the date on which demand notice was issued. Even the finding of the Labour Court is in favour of the petitioner. Rightly, the Labour Court held that he is entitled for compensation. The decisions cited by petitioner's counsel are distinguishable having regard to the fact that there was no delay on the part of the appellant in those cases in raising the dispute whereas, in the present case, there is a delay of about three years and few months. Therefore, the compensation of ₹ 50,000/- awarded by the Labour Court to the petitioner is in order. The process of appointment of the petitioner on *ad hoc* is not in accordance with the constitutional provision, therefore, he cannot seek for reinstatement. At the best he can seek for relaxation of age in participating in the regular recruitment. The Supreme

1 SCC 558 held that having regard to the quantum of service rendered by an employee in respect of reinstatement with continuity of service and back wages, compensation can be awarded. In view of said decision, no interference is called for in respect of award of the Labour Court dated 26.10.2012.

8.) Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

August 16, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.