

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

CWP No.7694 of 2013

Date of Decision:31.08.2016

Municipal Corporation Bathinda

... Petitioners

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda and another

... Respondents

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

Present : Mr. Amit Aggarwal, Advocate for the petitioner.

Mr. Inderjit Sharma, Advocate for respondent No.2.

P.B. BAJANTHRI J.

The petitioner has questioned the validity of the award dated 18.1.2012 (Annexure P-3) passed by the Industrial Tribunal, Bathinda.

The respondent-workman is appointed as Mali in the month of April 1991 as a daily wager. It is stated that on his own he left the job in the month of September 1991. Thereafter, once again he was appointed on daily wage in the month of April 1995 after a gap of four years. It is stated that on 1.7.1995, the respondent-workman abandoned the service. On 21.4.1997, demand notice was issued and reference made in the year 2001 was withdrawn by the workman for not knowing the date of termination. Consequently, once again demand notice was issued on 12.12.2001 and reference was decided by the Industrial Tribunal, Bathinda, on 18.01.2012 with reference to Section 25-G and 25-H of the Industrial Disputes Act, 1947 (for short "the Act") directing the petitioner to reinstate the respondent-workman with continuity of service. Hence, the present petition.

Learned counsel for the petitioner submitted that labour Court

has committed error in directing reinstatement with continuity of service for

the reasons that the respondent-workman's conduct, dates and events reveal that he has worked only for 74 days during the period from April 1995 to July 1995. Therefore, he is not entitled for relief sought. It was further contended that in the year 1991, he has worked only from April 1991 to September 1991. After a gap of four years, once again he was appointed on daily wage basis. For the second spell, he has worked for 74 days. Even though demand notice was issued on 21.4.1997, the same was withdrawn in the year 2001 after a gap of four years. Thereafter on 12.12.2001, once again demand notice was issued. In view of these facts and circumstances that the workman has abandoned service on his own and he is not entitled to reinstatement with continuity of service after a gap of four years. It was further submitted that Section 25-H of the ID Act are not applicable for the reasons that there is a gap of service from 1991 to 1995 i.e. about four years. Therefore, principles of Section 25-G and 25-H of the Act are not applicable.

On the contrary, learned counsel for the respondent submitted that reading of paras 14 and 15 of the labour Court award, it is evident that Section 25-G and 25-H of the ID Act are attracted and not Section 25-F of the Act. Therefore, the principle of "LAST COME FIRST GO" has been taken into consideration by the labour Court. As such, there is no error in the award. Even assuming that Section 25-F is attracted, learned counsel for the respondent has pointed out from Annexure P-4 that workman has completed 244 days.

Heard learned counsel for the parties.

Perusal of the record reveals that workman has worked in two spells i.e. from April 1991 to September 1991 and April 1995 to July 1995.

Condition for working an employee for 244 days is to be counted in a particular spell and not in break periods. Therefore, the workman has not completed 240 days. Insofar as application of Section 25-G and 25-H of the ID Act is concerned, it is evident from the conduct of the workman that for the first spell service to second spell service, there is a gap of four years. Therefore, question of applying Sections 25-G and 25-H of the ID Act would not arise in the present case. Conduct of the respondent-workman is to be taken note that demand notice was issued in the year 1997 and the same was withdrawn in the year 2001. Once again, demand notice was issued on 12.12.2001. In view of these facts and circumstances, the labour Court has erred in directing for reinstatement with continuity of service after a gap of about 17 years from the date of abandonment of service. As such, the award dated 18.1.2012 (Annexure P-3) is set aside.

The petition stands allowed.

31.08.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**