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

CWP No.6219 of 2016

Date of decision: April 04, 2016

D.A.V. College

.....Petitioner

Versus

Presiding Officer and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kanwar Pahul Singh, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the award dated 01.03.2016 (Annexure P-6).

Respondent No.2 had raised an Industrial dispute challenging his termination by serving a demand notice. The said dispute raised by respondent No.2 was referred for adjudication to the Industrial Tribunal, Amritsar by the appropriate Government.

The case of respondent No.2, in brief, was that he was employed as a Security Guard with the petitioner-Management on 12.06.2009. However, services of respondent No.2 were terminated on 18.04.2011 without complying with the mandatory provisions of Industrial Disputes Act, 1947 ('Act' for short).

The case of the petitioner-Management, on the other hand, was that respondent No.2 had worked with them on purely part-time basis. Respondent No.2 was employed on contract basis and his services came to an end on completion of contract period.

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

- "1. Whether there was relationship of employer and employee between the workman and the managements?OPW.
2. Whether the services of the workman have been illegally terminated by the managements?OPM.
3. Relief."

Parties led their evidence in support of their respective pleas.

The Industrial Tribunal vide award dated 01.03.2016 answered the reference in favour of respondent No.2 Hence, the present petition by the petitioner-Management.

Learned counsel for the petitioner has submitted that respondent No.2 had worked with the petitioner-Management on part-time basis. Hence, it was not a fit case where the workman was liable to be reinstated in service. In support of his arguments, learned counsel has placed reliance on *B.S.N.L. versus Bhurumal*, 2014(3) S.C.T. 49, wherein, it was held as under:-

"It is clear from the reading of the aforesaid

judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

*Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: **State of Karnataka vs. Uma Devi (2006) 4 SCC 1**). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he*

is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

In the present case, admittedly, respondent No.2 had worked with the petitioner-Management from 12.06.2009 upto 18.04.2011. The plea of the petitioner-Management was that the workman had worked on part-time basis as a Security Guard. Although, respondent No.2 had worked for about two years with the petitioner-Management, but his services were terminated without complying with the mandatory provisions of Section 25F of the Act. Petitioner-Management is running a College and respondent No.2 was working with the petitioner-Management as a Security Guard. It cannot be said that the

petitioner-Management does not require the services of Security Guard in future. Petitioner-Management had produced letters Exhibit M2 to Exhibit M46, wherein, it was mentioned that respondent No.2 was appointed as a part-time Security Guard. The learned Industrial Tribunal after appreciating the evidence lead by the parties on record held that the petitioner-Management had indulged in unfair labour practice. In this regard, observations recorded by the Industrial Tribunal in Para-14 of the award read as under:-

“E.S.I. Form of the workman is Ex.W3. There are letters Ex.MW1 to Ex.MW.13, Ex.M.30 to Ex.M.41 and Ex.M.43 to Ex.M.46. All these letters are in English and language of these letters is almost the same and these are signed by the workman. These letters are clear-cut unfair labour practice as it seems that the College used to get these letters typed from the staff and they used to write part time Security Guard so as to defeat the right of the workman. All these letters show that these were got signed from the workman in order to put break in his service. From all these letters, it is also clear that the workman has worked nearly for two years with the managements.”

It has been observed by the learned Industrial Tribunal that all the letters were issued to respondent No.2 to defeat his legal rights. All the letters were issued to show that there was break in service of respondent No.2, although, he had worked with the petitioner-Management for nearly two years. The Industrial Tribunal after appreciating the evidence on record had rightly come to the conclusion that the

petitioner-Management was indulging in unfair labour practice, the learned Industrial Tribunal rightly came to the conclusion that in the facts and circumstances of the present case, respondent No.2 was liable to be reinstated in service. In the facts of the present case, it is not a fit case, where, respondent No.2 was liable to be compensated in lieu of reinstatement. I have gone through the judgment relied upon by the learned counsel for the petitioner, but the same fails to advance the case of the petitioner as in the present case, the Management had resorted to unfair labour practice and had been issuing appointment letters to respondent No.2 from time to time by showing breaks in his service, so as to defeat his legal rights. The Industrial Tribunal has rightly exercised the jurisdiction vested in it.

No ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed.

**(SABINA)
JUDGE**

April 04, 2016
mahavir