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

CWP No.898 of 2016

Date of decision: January 15, 2016

Block Education Officer and others

.....Petitioners

Versus

Krishan Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

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

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 impugned award dated 25.08.2015 (Annexure P-4).

Respondent No.1 had raised an Industrial dispute by serving a demand notice challenging his termination. The appropriate Government referred the dispute raised by respondent No.1 to Industrial Tribunal-cum-Labour Court Hisar for adjudication.

The case of respondent No.1, in brief, was that he was appointed as a part-time Sweeper in Government School, Jind block vide order dated 05.06.2007 after his name was sponsored by Employment Exchange, Jind to Block Education Officer, Jind on 04.05.2007. Respondent No.1 continued working as a part-time Sweeper on D.C. Rates upto 31.03.2013 and thereafter, his services were terminated without compliance of mandatory provisions of Section 25-F of

the Industrial Disputes Act, 1947 ('I.D. Act' for short).

Petitioner in its reply denied the averments made by respondent No.1. It was averred that the services of respondent No.1 had been terminated as his behaviour was not good towards the staff and he had not complied with the instructions issued by the School staff.

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

“1. Whether the termination of services of the petitioner is legal or not? If so, to what relief he is entitled to?OPP.

2. Relief.”

Parties led their evidence in support of their respective pleas.

The Industrial Tribunal-cum-Labour Court vide award dated 25.08.2015 ordered the reinstatement of respondent No.1 with continuity of service and all other consequential benefits but without back-wages. Hence the present petition by the petitioners.

Learned State counsel has submitted that the Industrial Tribunal-cum-Labour Court has erred in ordering reinstatement of respondent No.1. In support of his arguments, learned 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, it was held as under:-

“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."

In order to prove his case, respondent No.1 appeared in the witness-box and deposed as per contents of the statement of his claim. Petitioners examined Sohan Lal as MW1 who stated that respondent No.1 had been appointed on 06.07.2007 as part-time Sweeper and he was never issued any charge-sheet nor any inquiry was conducted against him and no retrenchment compensation was paid to him. The said witness admitted that as per record, respondent No.1 had completed more than 240 days of service and no written notice was issued to him qua termination of his services. Thus, in the present case, respondent No.1 had worked for more than 240 days before his services were orally terminated.

Respondent No.1 had worked for about six years with the petitioners when his services were terminated without complying with the mandatory provisions of Section

25-F of the Act. Petitioners had not established before the Industrial Tribunal-cum-Labour Court that there was no post available of part-time Sweeper or that the work was not available or that respondent No.1 had not been appointed as per Rules. In these circumstances, the learned Industrial Tribunal-cum-Labour Court rightly ordered the reinstatement of respondent No.1 with continuity of service and all other consequential benefits but without back-wages. Thus, the relief of back-wages has been denied to respondent No.1 and he was only ordered to be reinstated in service with continuity of service and all other consequential benefits. In the facts and circumstances of the present case, the award passed by the Industrial Tribunal-cum-Labour Court is just and legal. Hence, the judgment relied upon by the learned State counsel fails to advance the case of the petitioners as it is based on different facts.

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

Dismissed.

(SABINA)
JUDGE

January 15, 2016
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