

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

DATE OF DECISION : 4.11.2016

1. L.P.A. No.1272 of 2016 (O&M)

**Rajesh Kumar v. Presiding Officer, Industrial Tribunal-
cum-Labour Court, Hissar.**

2. L.P.A. No.203 of 2016 (O&M)

**The Engineer-in-Chief, Public Health v. Rajesh Kumar
Branch and others and others.**

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present:- Shri D.S.Bali, Senior Advocate with Shri Vijay Kumar Sheoran,
Advocate for the appellant in LPA No.1272 of 2016 and for the
respondents in L.P.A. No.203 of 2016.

Shri Gagandeep Singh Wasu, Additional A.G. Haryana for the
appellant in L.P.A. No.203 of 2016 and for respondents in L.P.A.
No.1272 of 2016.

MAHESH GROVER, J.

By this order we will dispose of above said two L.P.A. Nos.1272 and
203 of 2016, one filed by the workman and the other by the State of Haryana
against the judgment of the learned Single Judge dated 25.8.2015.

The workman claimed a reference questioning the termination on the
ground that Section 25-F of the Industrial Disputes Act (hereinafter referred to as
the Act) had not been complied with and while answering the reference, the
Presiding Officer of the Labour Court determined that the termination was a result
of violation of the provisions of Section 25-F of the Act, but instead of
reinstatement, he granted a compensation of Rs.50,000/-.

Another factor which may be noticed in passing though not relevant for the purpose of answering the appeals as no such issue has been raised, is that the workman even though appointed as Beldar, was made to work as a Computer Operator. This fact is admitted as also the fact that the workman's appointment against a substantive post of Beldar though was in complete violation of the principles of public employment which is also the defence taken up by the State to deny any other service benefit except compensation which was awarded by the Labour Court.

Before the learned Single Judge, the workman made the statement that he would give up his claim for back wages and continuity of service from the date of his engagement in 2006 provided reinstatement is ordered. The learned Single Judge affirmed the finding regarding the violation of Section 25-F of the Act and negated the plea of the State questioning the plea of reinstatement of the workman on the ground that proper mode of employment was not followed at the initial step in 2006. The State also tried to introduce some documents before the Writ Court to show the workman's gainful employment which were discarded by the Writ Court on the ground that such documents at the stage of Writ proceedings cannot be accepted in the absence of any attempt in this regard being made by the State before the Labour Court.

Resultantly, reinstatement was granted to the workman as a fresh appointment largely on the waiver of back wages and continuity of service by the workman himself.

Before this Court, the workman has relied upon a judgment of the Hon'ble Supreme Court in **Raj Kumar Dixit v. Vijay Kumar Gauri Shanker** (2015) 9 S.C.C. 345, to contend that once the Labour Court concluded about violation of Section 25-F of the Act, reinstatement has to be an automatic consequence.

We have considered this aspect, but are constrained to observe that it is the workman himself who has waived of his back wages and reinstatement with continuity of service thus limiting his prayer to the one that was granted by the learned Single Judge i.e. reinstatement as a fresh appointment. Therefore, once his statement which is not disowned by the workman even before us has been made and respected, we would not permit the workman to resile from the same in the absence of anything to show that he was not aware of the consequences of such a statement particularly when we notice that the learned counsel representing the workman made a statement after seeking instructions from the workman himself.

The plea of the State that reinstatement could not be granted to the workman as his initial appointment was contrary to the rules, also does not find favour with us because of the virtually dishonest stand taken by the State in the entire proceedings. They disowned his employment completely by pleading that it was through a contractor which they could not establish on the basis of any valid proof. Besides, while appointing a person as a Beldar, they continued to extract work of a higher assignment, i.e. Computer Operator, while subjecting the workman to the emoluments of a Beldar which in our considered view, is an exploitative approach not expected of a State who has to act as a model employer.

Consequently, we dismiss both the appeals finding no legal infirmity in the impugned judgment.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

November 4, 2016

GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No