

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

1. LPA No.207 of 2016 (O&M)

Chief Engineer and others

.... Appellants

Versus

Lalkar Singh and another

.... Respondents

2. LPA No.208 of 2016 (O&M)

Chief Engineer and others

.... Appellants

Versus

Raj Kumar and another

.... Respondents

Date of Decision: 08.02.2016

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. B.S. Chahal, DAG, Punjab
for the appellants

HARINDER SINGH SIDHU, J.

This order shall dispose of aforesaid two intra Court appeals filed under clause X of the Letters Patent against the judgment dated 03.09.2015 passed by the Ld. Single Judge whereby the writ petitions (CWP Nos.19937 of 2012 and 19935 of 2012) filed by the appellants challenging the award dated 20.03.2012 passed by the Presiding Officer, Industrial Tribunal, Bathinda awarding

reinstatement and continuity of service to the respondents-workmen but limiting the back wages to 30% of the arrears from the date of the award, have been partly allowed.

For facility of reference, the facts are being taken from LPA No.207 of 2016.

Though there is delay of 124 days in filing both the appeals and the appellants have filed applications (CM No.419-LPA-2016 IN LPA No.207 of 2016 and CM No.422-LPA-2016 IN LPA No.208 of 2016) for condoning the delay, yet we have heard learned counsel for the appellants on merits.

The respondent-workman was engaged as a temporary Gauge Reader vide order dated 12.06.1995 for an initial period of 89 days. He joined on the same day. His services were extended for 89 days vide letter dated 11.09.1995. Thereafter, he was appointed for another 60 days. Ultimately his services were terminated with effect from 13.02.1996. He raised an industrial dispute, by serving demand notice dated 12.09.2001. The matter was referred to Labour Court for adjudication.

Ld. Labour Court after calculating found that the respondent-workman had put in 238 days in service before his termination. Ld. Labour Court held that the management had given notional and intermittent breaks in service, between the initial appointment and the extension only with a view to circumvent the beneficial provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'), which amounted to unfair labour practice.

Accordingly, it was held that the case of the respondent-workman fell within the mischief of Section 25-F of the Act and as no notice and retrenchment compensation had been given, directed his reinstatement with continuity of service. He was also held entitled to 30% back wages.

The award was challenged by the appellants by filing Civil Writ Petitions.

Ld. Single Judge accepted the prayer of the appellants that back wages should not have been awarded for the period prior to the demand notice which in this case had been served on 12.09.2001 i.e. about 5 and ½ years after the order of termination dated 13.02.1996. Accordingly, the award of the Labour Court was modified by directing that back wages awarded by the Labour Court would be computed w.e.f. 13.09.2001.

However the Ld Single Judge having been appraised of the fact that in a similar industrial reference No.7 of 2001 decided by the Presiding Officer, Labour Court Bhatinda on 12.07.2004 where the period of service was 236 days with notional breaks, the workman had been granted reinstatement with continuity of service with 40% back wages from the date of demand notice. The writ petition and subsequently SLP against the same was dismissed. With a view to prevent discrimination and accord similar treatment, Ld. Single Judge enhanced the back wages to 40% in this case as well.

Learned counsel for the appellants has argued that

instead of reinstatement adequate compensation should have been awarded in this case.

We are unable to accept the aforesaid contention, especially in the light of the fact that in identical circumstances, for similar period of service, reinstatement with continuity of service is 40% back wages awarded by the Labour Court has been affirmed right upto the Hon'ble Supreme Court.

Accordingly, there is merit in the appeals and the same are dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

08.02.2016
Atul