

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

CWP No.16208 of 1993
Date of decision: 10.03.2017

Administrator, Faridabad Complex Administration Petitioner

VS

Daya Nand Singh & anr. Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manoj K. Sood, Advocate
for the petitioner.

Mr. Naresh Kumar, Advocate
for respondent No.1.

Rajiv Narain Raina, J.(Oral)

Despite stay order granted by this Court on 24.12.1993 on the award subject to compliance of Section 17-B of the Industrial Disputes Act, 1947 and the stay not having been vacated so far, the Faridabad Complex Administration took the respondent back in service long ago rather than paying last drawn wages in terms of Section 17-B of ID Act without taking work from the respondent. This position obtains on ground level is informed by the counsel for respondent No.1. It is his further statement that the respondent is nearing the age of superannuation in about a year or two.

Acting upon the statement of learned counsel for the respondent, I would refrain from prying open the reinstatement award by the Labour Court and instead on account of passage of time I am of opinion that the equilibrium of over two decades should not be disturbed and the respondent deserves to be left to retire peacefully from service.

However, while no comment is made regarding merits of reinstatement but still this Court would have to speak about continuity of service and award of back wages. It is the assertion of the respondent-workman that his services were terminated on 01.01.1989 but the labour Court did not believe his story and preferred confining his relief from the undisputed date of appointment i.e. 20.06.1985 till 14.08.1989 when the dispute was raised for the first time by serving a demand notice and became subject matter of reference. The management witness testified that the respondent-workman worked from 20.06.1985 to 18.03.1986 and no further, which works out to be a brief period of about 9 months. If the statement of the workman is to be believed that his services were terminated on 01.01.1989 then he has no case at all to plead and prove because the petitioner's assertion would be inconsistent with the law in Section 25B (2) (a) when there is not even an iota of evidence on record that he was in continuous and uninterrupted service for 240 days and had actually worked under the employer during the 12 calendar months preceding the date of termination in which case the petitioner would not be entitled to any relief whatsoever for want of fulfilling *inter alia* this jurisdictional fact for lack of which the entire award may have to be set aside.

In order to save the respondent-workman from this disaster, I would modify the award and deny him the back wages altogether even beyond the date of demand notice because his service was far too brief and even by present standards in lieu of reinstatement would bring no more than rupees fifty thousand applying the principle of just compensation in **Asst.**

***Engineer, Rajasthan Development Corporation & anr. vs. Gitam Singh,
(2013) 5 SCC 136.***

Accordingly, the petition is partly accepted. The question of reinstatement and continuity of service under the employer is preserved in favour of the workman. He would be deemed to have worked on the original post held by him on 20.06.1985 and the same status unless the employer wishes to grant and extra relief on its own. However, no opinion of the Court is expressed on this point. The award of back wages is set aside. The remaining award is left intact and the present petition is disposed of in the above terms.

**(RAJIV NARAIN RAINA)
JUDGE**

10.03.2017
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<i>1. Whether speaking/non-speaking?</i>	<i>Yes</i>
<i>2. Whether reportable/non-reportable?</i>	<i>No</i>