

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

CWP No.12380 of 1996 (O&M)

Date of Decision:26.07.2017

Haryana State Cooperative Supply and Marketing Federation Limited,
Chandigarh (HAFED)

... Petitioner

Vs.

The Presiding Officer, Labour Court, Ambala and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Jai Bhagwan Sharma, Advocate for the petitioner.

Mr. Naveen Daryal, Advocate for respondent No.2.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner assailed the award passed by the Labour Court dated 2.4.1996 (Annexure P-6).

Petitioner was appointed as work supervisor on 1.4.1990 on 89 days basis. His services were terminated on 30.06.1991. Thus, respondent-workman raised industrial dispute by issuing demand notice on 26.11.1991. Reference has been decided by the Labour Court on 2.4.1996 while holding that respondent-workman is to be reinstated with continuity of service and full back wages. Against the award passed by the Labour Court, the present petition has been filed by the petitioner.

Learned counsel for the petitioner submitted that respondent-workman was appointed on 89 days basis and not on regular basis. Thus, there is no infirmity in the order of termination dated 30.06.1991. Further for non compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short "ID Act") at the best, the petitioner is entitled for compensation instead of reinstatement since petitioner is out of service w.e.f. 28.12.1990.

Per contra, learned counsel for the respondent-workman submitted that services of respondent-workman have been utilized by the petitioner on the post of work supervisor, even though, it is for 89 days and he was continued for some more time. Thus, there is no infirmity in the award passed by the Labour Court dated 2.4.1996. It is also submitted that petitioner has complied Section 17-B of the ID Act. In this background, respondent-workman is entitled for reinstatement with continuity of service alongwith full back wages.

Heard learned counsel for the parties.

Having regard to the date of entry into service i.e. 1.4.1990 on 89 days basis and further services of respondent-workman were discontinued within a short period of two years and two months, question of reinstatement with continuity of service alongwith full back wages do not arise and award passed by the Labour Court is illegal and arbitrary. Moreover, taking into account the fact that petitioner is out of job since 1991, at this distance of time, respondent-workman is not entitled for reinstatement with continuity of service alongwith full back wages. However, at the best, the respondent-workman is entitled for compensation in terms of the judgment passed by the Supreme Court in the case of **Bharat Sanchar Nigam Limited** v. **Bhurumal**; 2014 (7) SCC 177. Para 33 of the said judgment reads 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 mala fide and/or by way of victimisation, 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 a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that 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.”

Accordingly, award passed by the Labour Court dated 2.4.1996 is modified to the extent of granting compensation only instead of reinstatement with continuity of service alongwith full back wages. Petitioner is hereby directed to pay a compensation of Rs.1,50,000/- to the respondent-workman within a period of three months from today. Failing which respondent-workman is entitled for simple interest @ 6% per annum.

Disposed of accordingly.

26.07.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**