

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

**205**

**CWP-21701-2010 (O&M)  
Date of decision:14.07.2017**

Ajmer Kaur and others

...Petitioners

Versus

Union of India and others

.... Respondents

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

Present: Mr. K.S.Jetley, Advocate for the petitioners.

Mr. Brijeshwar Singh Kanwar, Advocate for the respondents.

**P.B. BAJANTHRI, J. (ORAL)**

In the instant writ petition, petitioners have assailed order passed by the Labour Court dated 07.10.2009 (Annexure P1). Deceased employee is stated to have been appointed as Extra Departmental Branch Postmaster at Rampur by the respondent No.2 on 22.06.1987. His services were terminated on 09.08.1989. Feeling aggrieved by the order of termination, he had approached Central Administrative Tribunal on two occasions. On both the occasions, petitioner's original application before the Central Administrative Tribunal got dismissed on the question of jurisdiction of the Central Administrative Tribunal. Thus, deceased employee has raised Industrial Dispute in respect of termination. The Labour Court decided the reference in respect of termination that deceased employee's appointment was on temporary basis. Consequently, he has no right to hold the

temporary post. The Labour court had also decided the issue relating to selection and appointment to the post of Extra Departmental Branch Postmaster on regular basis pursuant to the advertisement issued. Deceased employee was candidate for the recruitment even though the selection and appointment issue was not part and parcel of reference. Labour Court proceeded to decide the selection issue pursuant to the advertisement. During pendency of the reference workman died and legal representatives have been brought on record. Learned counsel for the petitioners submitted that termination of the deceased employee was without notice and retrenchment compensation has not been given.

2. Learned counsel for the respondents vehemently, contended that they have raised preliminary issue relating to jurisdiction of the Labour court in deciding the deceased employee's termination since the jurisdiction in respect of the post of Extra Departmental Branch Postmaster in the postal department lies with the Central Administrative Tribunal and not the Labour Court. Even though said issue has not been considered by the Labour Court. Still respondents can maintain the said issue before this court that the award which is under challenge dated 07.10.2009 passed by the Labour Court is without jurisdiction. It was further contended on the merit that there is no infirmity in the order of termination for the reasons that deceased employee was appointed temporarily. As and when regular recruitment took place, deceased employee is to make way to the regular employee who has been recruited in accordance with the rules of recruitment. Therefore, petitioners have not made out a case so as to

interference with the award passed by the Labour Court dated 07.10.2009.

3. Heard counsel for the parties.

4. Perusal of the records, it is not evident that whether petitioner was appointed on temporary or on contract basis. No material has been placed on record except stating that deceased employee was appointed on ad hoc basis. It was also noticed that termination is without notice and without retrenchment compensation. Therefore, inference can be drawn that termination of deceased employee is not in accordance with law. Assuming that even the deceased employee was temporary employee, Supreme Court time and again held that even before termination of ad hoc employees, they are entitled for notice and entitled for retrenchment compensation. Thus, order of termination is contrary to the Supreme Court decision in respect of non-issuance of notice. Hence award passed by the Labour court that deceased employee is not entitled for notice before his termination, is incorrect. Insofar as jurisdiction of the Labour court is concerned, even though Labour Court failed to appreciate while deciding the reference and passed order on merit. The contention of the respondents that labour court has no jurisdiction is concerned, the respondents have not challenged the award dated 07.10.2009 to the extent that Labour Court has failed to consider the preliminary issue of jurisdiction of the Labour Court. In other words, respondents have accepted the award dated 07.10.2009. As respondents, they cannot take the contention relating to jurisdiction of the Labour Court so as to set aside the award dated 07.10.2009 passed by the Labour court on the point of jurisdiction. Moreover respondents have not

challenged the award to the extent of jurisdiction of the Labour Court by filing CWP. Since the matter relates back to of the year 1989 and the fact that deceased employee had approached Central Administrative Tribunal on two occasions. Thereafter to Labour Court and to this court. During pendency of the Labour court case, LRs have been brought on record due to the death of the applicant- Sh. Harjeet Singh. In order to give quietus to the litigation, the legal representatives of the petitioners are entitled to compensation with reference to the fact that deceased employee has rendered 2 years and few months of service during the period from 22.06.1987 to 09.08.1989. The Supreme Court in the case of ***Bharat Sanchar Nigam Limited versus Bhurumal*** reported in (2014)7 SCC 177 in para 33 held 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 malafide and/or by way of victimization, 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 procedural defect, namely in violation of [Section 25-F](#) of the Industrial Disputes Act, this Court is consistent in taking the view 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.”*

5. In the present case, question of reinstating the deceased employee

do not arise. Therefore, legal representatives-petitioners are entitled for compensation of Rs.1.5 Lacs. The same shall be paid by the respondents within a period of 3 months from today. Failing which petitioners-legal representatives of deceased employee are entitled to 6% interest on the compensation amount.

**14.07.2017**  
pooja saini

**( P.B.BAJANTHRI)**  
**JUDGE**

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|--------------------------|--------|
| Whether speaking/reasons | Yes/No |
| Whether Reportable:      | Yes/No |