

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

**CWP No.18110 of 2013
Date of Decision:17.07.2017**

Mano Devi

... Petitioner

Vs.

Satya Bharti Primary School and others

... Respondents

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

Present : Mr. V.B. Aggarwal, Advocate for the petitioner.

Mr. Vivek Salathia, Advocate for respondents No.1 to 3.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner assailed order dated 26.7.2012 (Annexure P-3) passed by the Labour Court.

The petitioner is stated to have joined service as a School Guardian (Didi) w.e.f. 1.4.2009 and her services were terminated on 31.03.2011. Joint demand notice was issued by the petitioner and one Mr. Raj Pal. In para-2 of Annexure P-2, it is stated that demand was raised by the petitioner. Petitioner was refused to report for work. Further, it is contended as follows: "It is submitted the applicant Mrs. Mano Devi never came for work after 31.3.2011 nor we refused employment on this date. She has left the services of her own accord. It is reliably learnt that she is not reporting to work under protest as Mr. Raj Pal who is her relative was not taken on duty. Even now she can join her duties subject to disciplinary action for this misconduct."

The Labour Court while deciding the reference No.101 of 2011 failed to appreciate these factual aspects and proceed to hold that petitioner-workman is not entitled for relief sought in the reference. It is to be noted that management was ex parte before the Labour Court. Thus, the present

petition.

Learned counsel for the petitioner vehemently contended that petitioner has worked from 2009 to 2011 and she was denied service after 31.3.2011. Contents of Annexure P-2 against demand notice dated 5.4.2011 has not been appreciated by the Labour Court in order to hold that petitioner is entitled for continuity of service with full backwages etc. Thus, the Labour Court has erred in considering the evidence on record that petitioner served the respondent-Management as a School Guardian during the period from 1.4.2009 to 31.3.2011. Therefore, award passed by the Labour Court is liable to be set aside.

Per contra, learned counsel for the respondents submitted that there is no master and servant relationship between the petitioner and respondent-Management. It is further submitted that petitioner's relative one Mr. Raj Pal who was employed as a School Guardian and not the petitioner. It was also submitted that even assuming that petitioner was employed still she has not completed 240 days so as to extend any benefits as claimed under the reference which was subject matter before the Labour Court. Thus, the petitioner has not made out a case so as to interfere with the Labour Court award dated 26.7.2012.

Heard learned counsel for the parties.

Crux of the matter in the present case is whether petitioner's services were utilized by the respondent-Management or not?

Perusal of Annexure P-2 cited supra, it is evident that petitioner worked during the period from 2009 to 2011. Therefore, contention of the respondent that petitioner's services were never engaged is highly arbitrary and illegal. Since the petitioner has worked during the period from 1.4.2009

to 31.3.2011 and she is not working from 2001, question of reinstatement do not arise at this distance of time. At the best, the petitioner 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.”

Having regard to the service rendered by the petitioner from 2009 to 2011, petitioner is entitled for compensation of Rs.2,00,000/-. The same shall be paid by the respondents within a period of three months from today. If the compensation amount is not disbursed within the stipulated period, in that event, petitioner is entitled for simple interest @ 6% per annum.

Disposed of accordingly.

17.07.2017

rajeev

Whether speaking/reasoned

Yes/No

(P.B. Bajanthri)

Judge

Whether reportable

Yes/No