

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26153 of 2012 (O&M)
Date of Decision:-30.08.2017.

Suresh Kumar

.....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar and
others

.....Respondents

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

Present: Mr. Neeraj Kumar, Advocate for the petitioner.

Mr. J.S. Bedi, Additional A.G. Haryana.

P.B. BAJANTHRI, J. (Oral)

In the present petition, petitioner has challenged the validity of
the award passed by the Labour Court dated 15.06.2012 (Annexure P-5).

Petitioner was appointed as a Tubewell Operator on 10.02.2002
and his services were stated to have been dispensed on 09.08.2003.
Thereafter, he raised a demand notice followed by industrial dispute.
Labour Court passed the award while holding that even though petitioner
has completed 240 days in a year and there is a violation of Section 25-F of
the Industrial Disputes Act, 1947 and having regard to the fact that the
petitioner failed to establish that juniors to the petitioner were continued
read with the fact that the petitioner has rendered service from 10.2.2002 to

09.08.20013, instead of ordering reinstatement awarded compensation of ₹ 20,000/-.

Learned counsel for the petitioner submitted that in identical matter i.e. CWP No.6491 of 2011 (Annexure P-6), this Court was pleased to set aside the award passed by the Labour Court and directed the respondent Management to reinstate the petitioner therein with continuity of service etc. He further relied on decision passed in CWP No.23977 of 2011 decided on 04.09.2015 (**Manoj Kumar Vs. The Presiding Officer and another**). It was submitted that Sh. Manoj Kumar was junior to the petitioner. Hence, in view of the aforesaid decisions, petitioner is also entitled to the relief sought in the present petition.

Per contra, learned counsel for the respondents resisted the petitioner's claim stating that petitioner has rendered service from 10.02.2002 to 09.08.2003 and petitioner is out of service from 09.08.2003. Therefore, at this distance of time, question of reinstating him do not arise. That apart, petitioner was appointed only on *ad hoc* basis. In view of Supreme Court decision passed in **Secretary, State of Karnataka and others Vs. Uma Devi and others (2006) 4 SCC 1**, petitioner is not entitled to reinstatement.

Heard learned counsel for the parties.

The Labour Court has considered grievance of the petitioner in respect of rendering service of 240 days in a year in favour of the petitioner. Insofar as contention that junior to the petitioner is continued in service is concerned, no material was placed before the Labour Court so as to apprise the contention of the petitioner that junior employee is being continued.

Therefore, the Labour Court rightly proceeded to pass the award of

compensation. Insofar as relying on the two decisions cited supra by the petitioner, it is to be noted that in both the cases, case of **Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177** has not been taken into consideration. Para 33 of the above decision reads as under:-

“33. 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.”

Having regard to the Supreme Court decision read with the facts of the present case that petitioner has rendered service from 10.02.2002 to 09.08.2003, in the year 2017, one cannot expect for reinstatement in view of the Supreme Court observation in the case of **Bharat Sanchar Nigam Limited v. Bhurumal** (supra). At the best, petitioner is entitled to enhancement of compensation from ₹ 20,000/-. Petitioner is entitled to enhanced compensation from ₹ 20,000/- to ₹ 75,000/-. To that extent award of the Labour Court is modified. The second respondent is hereby directed to disburse enhanced compensation within a period of 4 months from today.

With the above observations, petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

August 30, 2017.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.