

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

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**CWP-22969-2014 (O&M)
Date of decision:17.07.2017**

Satbir Singh Ranga

....Petitioner

Versus

Director Secondary Education Haryana, Chandigarh and others

.... Respondents

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

Present: Mr.Baljinder Singh, Advocate for the petitioner.

Mr. J.S.Bedi, AAG, Haryana.

P.B. BAJANTHRI, J. (ORAL)

Petitioner has assailed award passed by the Labour Court dated 17.07.2014 (Annexure P20). Petitioner is stated to have been appointed in the office of the Block Education Officer, Maham as a Waterman on part-time basis w.e.f. 14.07.1986. His services were dispensed on 20.04.2000. He was once again appointed on 27.11.2000. Thereafter petitioner is stated to have remained absent on many occasions. From 03.08.2004 onwards, he remained absent. The respondents communicated a letter on 26.07.2006 directing the workman for joining the duty. Petitioner is stated to have issued a demand notice on 15.03.2009. Thereafter, respondent-Management made a communication to the petitioner to report back to duty. In this background reference no. 005 of 2010 was made. Labour Court decided the reference on 17.07.2014 against the respondent-workman. Hence the

present petition.

2. Learned counsel for the petitioner submitted that respondent-Management have manipulated the attendance register by marking petitioner's absence. Even though, petitioner was very much on duty. It was further submitted that due to demand of the petitioner-workman for regularization, petitioner was not allowed to discharge the duties. It was further contended that communications were made to the petitioner by the respondent-Management directing him to report for duty after 26.07.2006. Had the petitioner remained absent during 03.08.2004 to 26.07.2006? The respondent-management should have made necessary communication asking petitioner to report back to duty. It was further submitted that the communications which were made on 26.07.2006, 22.07.2009, 10.08.2010 and 18.02.2010 were not at all communicated to the petitioner. It was for the first time brought before the Labour Court. Thus, in order to deny the benefits of reinstatement and continuity of service, respondent-management have produced all those documents. Therefore, the Labour Court has erred in holding that petitioner is not entitled for relief sought in the reference.

3. Per contra, learned counsel for the respondents vehemently contended that Labour court after perusing the records, it has come to the conclusion that petitioner has not made out a case for the reasons that petitioner has remained absent and he has not obeyed the communications of the Management. Further issue of delay and laches on the part of the petitioner, has been taken into consideration by the Labour Court.

Therefore, petitioner has not made out a case so as to interfere with the award passed by the Labour Court dated 17.07.2014.

4. Heard learned counsel for the parties.

5. It is undisputed that petitioner joined service on 11.07.1986 and his services were dispensed on 20.04.2000. Thereafter, once again he was appointed on 27.11.2000. He had worked up to 03.08.2004. Thereafter, he remained absent. The same has been disputed by the petitioner stating that even though petitioner was working, in the attendance register he was marked as absent on the score that petitioner was demanding for his regularization. If no material has been produced by the petitioner to show that petitioner was in service beyond 03.08.2004, at the same time, respondent-management have not taken any action during the intervening period from 03.08.2004 to 26.07.2006 the date on which a communication has been made to the petitioner asking him for reporting back to duty. Further petitioner had issued a demand notice only on 15.03.2009. After receipt of demand notice respondent-management proceeded to issue some more communication to the petitioner asking him for reporting for duty. No evidence has been produced to show that those communications were communicated to the petitioner by producing corroborative evidence. In this background, whether petitioner is entitled for reinstatement with continuity of service etc. was the subject matter before the Labour Court. The Labour court held that there is a delay in demand notice. Hence the petitioner is not entitled for relief sought in the reference. Having regard to the conduct of the respondent-management also to the extent that there is no

correspondence between 03.08.2004 to 26.07.2006 relating to issuance of show cause notice or a letter asking the petitioner to report back to duty and further after receipt of demand notice on 15.03.2009 respondents-management are stated to have issued communication on various dates in the year 2010.

6. Having regard to these facts and circumstances and the fact that petitioner is not working since 2004 or 2006 petitioner is not entitled to reinstatement with continuity of service etc. The Supreme Court decision 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.”

In view of the above judgment, petitioner is entitled only for

compensation. The concerned respondent is hereby directed to pay compensation of Rs.3 Lacs to the petitioner within a period of 3 months from today failing which petitioner is entitled to interest @ 6% per annum on the compensation amount.

17.07.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

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