

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

269

**CWP-23594-2014 (O&M)
Date of decision:31.07.2017**

Xen, OP Divisional No. 1 and 2, Dadri, Distt. Bhiwani and others

...Petitioners

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and
another

.... Respondents

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

Present: Mr.Gobind Korla, Advocate for
Mr. Sandeep Vermani, Advocate for the petitioners.

Mr. J.P.Sharma, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioners have assailed award passed by the Industrial Tribunal-cum-Labour Court dated 03.01.2014 (Annexure P1).

2. Respondent No.2 was appointed as a Mali (Class IV employee) on 01.01.1987 on daily wage basis. He has worked up to December, 2000. Respondent-workman issued a demand notice on 06.05.2003. Consequently, reference was made. Labour Court passed an award in favour of respondent-workman that he is entitled for reinstatement on his previous post with continuity of service and 50% back wages from the date of demand notice dated 06.05.2003. Thus, petitioners are aggrieved by the

award passed by the Labour court dated 03.01.2014.

3. Learned counsel for the petitioner submitted that no doubt respondent-workman has worked from 1987 to 2000. For the first time he has issued demand notice only on 06.05.2003. Therefore, award of Labour court in reinstating him with backwages with continuity of service and 50% back wages from the date of demand notice is arbitrary and illegal and contrary to decision of the Supreme Court in the case of ***Bharat Sanchar Nigam Limited versus Bhurumal*** reported in (2014)7 SCC 177 in para 23 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.”

4. It was further contended that instead of reinstatement and continuity of service and 50% back wages respondent-workman is entitled

for compensation. Question of reinstating at this stage may not be correct in view of the aforesaid decision.

5. Per contra, learned counsel for the respondent-workman submitted that respondent No.2-workman was appointed as a Mali (Class IV employee) in the petitioner-Limited company. It was submitted that merely paying compensation at this distance of time may not be correct for the reasons that respondent No.2-workman was appointed as Mali (Class IV employee). Persons who are similarly situated employees who entered into service in the year 1987 and whose services have not been terminated their services have been regularized. Therefore, awarding compensation instead of reinstatement with continuity of service with 50% back wages as awarded by the Labour court is in order.

6. Heard learned counsel for the parties.

7. Undisputedly, respondent No.2-workman was appointed as a Mali (Class IV employee) on 01.01.1987 and his services were dispensed in the month of December, 2000. Thereafter, he raised demand notice on 06.05.2003. Consequently, reference was made and award was passed on 03.01.2014. Whether respondent No.2-workman is entitled for reinstatement with continuity of service and back wages or compensation is the issue in the present case. No doubt Supreme Court in **Bhurumal's** case (Supra) in para 23 held that reinstatement is not automatic and also it was observed that it all depends on facts of the each case. In **Bhurumal's** case workman had rendered service from 01.07.1987 to 27.04.2002 on daily wage basis. In para 23 read with para 26 Supreme Court was pleased to

hold that “no direct evidence for working 15 years have been furnished by the respondent and most of his documents are relatable to two years i.e. 2001 and 2002”. Therefore, the facts of the present case and the decision of the Supreme Court are distinguishable. Petitioners have not disputed respondents work during the period from 01.01.1987 to December, 2000. Therefore, rightly, labour court has directed for reinstatement and continuity of service and 50% back wages from the date of demand notice on 06.05.2003. If the delay in raising demand notice from 2002 to 2003 is taken into consideration in that event respondent-workman is not entitled for 50% back wages. Award passed by the Labour court is modified to the extent of awarding 50% back wages to that of 40% back wages.

8. With the above observation, CWP stands disposed of.

9. In view of the disposal of this writ petition, petitioners are hereby directed to reinstate respondent-workman with 40% back wages pursuant to the award dated 03.01.2014 within a period of two months from today and to extend all service benefits on par with similarly situated persons whose services were not terminated. Deposited amount of Rs.3 lacs by the petitioner in the Labour Court is concerned, Labour court is directed to return to the petitioners by issuing demand draft in the name of the concerned petitioner on an application or in accordance with law or procedure in vogue.

(P.B.BAJANTHRI)
JUDGE

31.07.2017

pooja saini

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No