

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

238

CWP-6460-2016 (O&M)
Date of decision:07.11.2017

Satish Kumar Jain

....Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

.... Respondents

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

Present: Mr. Animesh Sharma, Advocate for the petitioner.

Mr.B.S.Sewak, Addl. A.G. Punjab.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner seeks setting aside/modification of award passed by the Labour Court dated 02.01.2013 (Annexure P6) and consequential order passed on the application for modification dated 10.02.2016 (Annexure P8).

2. Name of the petitioner was sponsored by the Employment Exchange. Amongst others he was interviewed. Petitioner was appointed as Dispenser (Homeopathic) on 19.01.1983. His services were dispensed on 21.02.1984 (Annexure P2). Petitioner is stated to have submitted demand notice on 17.10.1984. Thereafter, one more demand notice was issued on 28.05.1994. Labour court decided the reference in favour of the petitioner

on 24.02.1997 which was *ex parte* award. Feeling aggrieved by the *ex parte* award, respondent no.2 has filed writ petition and it was disposed of on 13.02.2012 while remanding the matter to the Labour Court for deciding the reference afresh within a period of 8 months. Labour court passed award on 02.01.2013 wherein finding has been given in favour of the petitioner. However, instead of reinstating, compensation of Rs.50,000/- has been awarded. Thus, the present writ petition.

3. Learned counsel for the petitioner submitted that even though initial appointment of the petitioner was in accordance with law, termination is without notice, without compliance to the provisions of Industrial Disputes Act therefore, dispensing petitioner from service is liable to be set aside. It was further contended that petitioner was pursuing the matter from 1996 till 2013. Therefore, he is entitled for reinstatement with continuity of service and back wages. It was also submitted that juniors to the petitioner are in service. Learned counsel for the petitioner relied on the decisions titled as ***Harjinder Singh Versus Punjab State Warehousing Corporation*** reported in AIR 2010 SC1116 and ***Devinder Singh Versus Municipal Council, Sanaur*** reported in AIR 2011 SC 2532 to contend that if there is violation of provisions in that event reinstatement is mandatory.

4. Per contra, learned counsel for the respondents while resisting the claim of the petitioner pointed out that even though petitioner had issued a demand notice on 17.10.1984, he did not pursue thereafter for nearly a decade. He has issued one more demand notice creating cause of action on

28.05.1994. Thereafter, he got reference. Due to unexplained delay and latches of nearly one decade, the petitioner is not entitled for reinstatement with continuity of service and back wages.

5. Heard learned counsel for the parties.

6. No doubt, petitioner's initial appointment was in accordance with law. However, cause of action accrues to the petitioner in the month of February, 1984. No doubt, he had issued demand notice on 17.10.1984 thereafter, he failed to pursue the matter in getting reference. Consequently, one more demand notice was issued on 28.05.1994. Thus, further proceedings conducted by the Labour Court on 24.02.1997 while passing the award in favour of the petitioner which was an ex parte award, the same was set aside by this court while remanding the matter on 13.02.2012 for passing award afresh within a period of 8 months. Labour court proceeded to pass award on 02.01.2013 to the extent of awarding only compensation of Rs.50,000/-. Petitioner has not made a case for reinstatement with continuity of service. Even though, his appointment was in accordance with law that apart, his juniors who were appointed have been continued. Having regard to the conduct of the petitioner that he slept over the matter for about decade during the period from 1984 to 1994 therefore, petitioner is not entitled for reinstatement with continuity of service. The petitioner relied on two judgments of **Harjinder Singh's** case (supra) and **Devinder Singh's** case (supra). These are distinguishable with reference to the facts of the case to the extent that in these cases delay and latches was not the subject matter. Having regard to the conduct of the petitioner to the extent

that he slept over the matter for a decade during the year 1984 to 1994, he is not entitled for reinstatement. Therefore, no interference is called for in respect of Labour Court award dated 02.01.2013 and 10.02.2016 (Annexures P6 and P8).

7. Accordingly, CWP stands dismissed.

07.11.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

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