

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.7840 of 2015
Date of decision: 19.07.2017

Jaspal Singh

..... Petitioner

Versus

Presiding Officer and another

..... Respondents

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

Present:- Mr. Amarjit Singh, Advocate
for the petitioner.

Mr. Sanjeev Soni, Advocate
for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

Instant petition is to quash the award passed by Labour Court dated 05.02.2015 (Annexure P-7).

The petitioner is stated to have been appointed as a Tubewell Driver on 01.01.1999 and his services were discontinued w.e.f. 31.10.2001. The service of the petitioner was terminated without compliance to provisions of Industrial Disputes Act. Labour Court rejected the claim of the petitioner-workman on the score that petitioner has not produced any material to show that he has worked with the respondent. One of the contentions of the respondent is that petitioner was appointed through contractor and his services were not utilized for the purpose of Tubewell Driver.

It was also submitted that no documents are available so as to say that petitioner has worked with the respondent. The Labour Court in

Para 13 has held that after due examination of the affidavit as well as contract Exhibit M-1/2 respectively and so also no log book has been placed by the workman to show that the petitioner has worked for 240 days.

Learned counsel for the petitioner submitted that due to non-production of log book before the Labour Court by the respondent-management, petitioner-workman could not made out a case before the Labour Court to the extent that his services were engaged and has completed 240 days. Under the Right to Information Act, petitioner has obtained extract of log book for a particular period to show his service were engaged for the purpose of Tubewell Driver. The respondent despite possessing the log book, has failed to produce before the Labour Court. In other words, they are suppressed the material facts before the Labour Court. Thus, the finding given by the Labour Court that no material has been placed on record to show that the petitioner has worked with the respondent, is contrary to the fact with reference to log book maintained by the respondent which has been produced as Annexure P-8 (Colly).

In view of the log book and the fact that petitioner's name is reflected which reveals that the petitioner's services were engaged by the respondent-management as a Tubewell Driver. Since the petitioner's service have been dispensed w.e.f. 31.10.2001, therefore, question of reinstating him into service do not arise. The Hon'ble Supreme Court in the case of '**BSNL Vs. Bhurumal'** 2014 SCC, 177 in para 33 held as follows:-

“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.”

Hon'ble Supreme Court further clearly held that if there is a delay in deciding termination issue and if an employee has served only for few years, in that event, question of reinstatement with back wages do not arise. On the other hand, at the best, such an employee is entitled for compensation.

In terms of the above decision, petitioner is entitled for compensation to a sum of ₹ 2 lakhs. The concerned respondent-management is hereby directed to pay the compensation of ₹ 2 lakhs and the award passed by the Labour Court dated 05.02.2015 (Annexure P-7) is modified to that extent. If the compensation amount is not paid within a period of three months from today, in that event, petitioner is entitled for simple interest @ 6% per annum.

Petition stands allowed.

19.07.2017
Dinesh Bansal

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No