

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.10.2017

1. CWP-9735-2016 (O&M)

State of Punjab and others

...Petitioners

V/s.

Jagroop Singh and another

...Respondents

2. CWP-2518-2016 (O&M)

Jagroop Singh

...Petitioner

V/s.

State of Punjab and others

...Respondents

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

Present: Balbir Singh Sewak, Addl. A.G., Punjab.

Mr. S.K. Chawla, Advocate for
the respondents (Jagroop Singh).

P.B. BAJANTHRI, J. (Oral)

1. By this common order, both the afore-mentioned writ petitions i.e. CWP Nos. 9735 and 2518 of 2016 shall be decided together as issue is identical.

2. In CWP No. 2518 of 2016, petitioner has challenged the award passed by the Labour Court dated 07.07.2015. Even the respondent-State has filed Writ Petition No. 9735 of 2016 challenging the award. The Labour Court passed an award and granted compensation of Rs.25,000/- to the petitioner for the service rendered by him during the period from 24.04.1997 to 28.02.2002 as a daily wager.

3. The petitioner was appointed as a Chowkidar on 24.04.1997.

During the periods from 03.03.1998 to 28.02.1999 and from 03.03.1999 to

28.02.2000 there were certain breaks. The petitioner filed a civil suit seeking for a declaration which was decreed. Consequently, an appeal was filed and the same was allowed. Thereafter, the petitioner preferred RSA before this Court and during the pendency of RSA, he withdrew the RSA on 14.03.2011. In this background, the petitioner raised industrial dispute in the year 2011. Accordingly, reference was ordered on 05.07.2011. The Labour Court, while deciding the reference no. 126 of 2011 passed an award in favour of the workman to the extent that he is entitled for a compensation of Rs.25,000/- for each completed year of service with reference to service rendered by him for the period from 24.04.1997 to 28.02.2002. Thus, aggrieved by the award, he filed a writ petition.

4. The petitioner-workman submitted that he has rendered service as a daily wager from 24.04.1997 to 28.02.2000. By merely approaching in wrong forum, does not take away the petitioner's right. In support of this contention for reinstatement with continuity of service, he has relied on a decision reported in **2015 (4) ACT, Gauri Shankar V/s. State of Rajasthan**.

5. *Per contra*, learned counsel for the State submits that the petitioner was not appointed against any sanctioned post. He was only a daily wager. Therefore, no right had been created for reinstatement. Even the nature of the appointment of the petitioner not made him to entitle for compensation. Thus, the Labour Court has erred in granting compensation. He has cited a decision reported in **2014 (4) SCT 514, Municipal Council, Dina Nagar, Tehsil & District, Gurdaspur V/s. Presiding Officer, Labour Court, Gurdaspur and another**. Para 48 (iii) of the said decision reads as under:-

“(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour

Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.”

6. Heard learned counsel for the parties.

7. Undisputedly, the petitioner was a daily wager and he was appointed in the year 1997 and his service were dispensed on 28.02.2000. The petitioner had a cause of action in approaching the Labour Court in the year 2000. On the other hand, he has approached the wrong forum by filing a civil suit and pursued the same till 2011. In the year 2011, he has realized that he had remedy under the Industrial Disputes Act and consequently reference was sought. A reference No. 126 of 2011 was decided by Labour Court on 07.07.2015 and extended the compensation. The petitioner is out of service from 28.02.2000. He had appropriate remedy in the year 2000 before the Industrial Tribunal. For not utilizing the appropriate remedy for 9 years, petitioner is not entitled to reinstatement with continuity of service and back-wages. Therefore, rightly the Labour Court decided to award compensation. In fact the Supreme Court in the case of **BSNL V/s Bhurumal**, reported in **(2014) 7 SCC 177** held that if the service of an employee is dispensed for a long back, in that event he is not entitled for reinstatement that too if he is an adhoc employee or daily wager. In this case, petitioner is a daily wager. Therefore, petitioner is not entitled for reinstatement. No interference is called for in respect of Labour Court

award.

8. Accordingly, both the afore-mentioned writ petitions i.e. CWP Nos. 9375 and 2518 of 2016 stand dismissed.

October 09, 2017
Divyanshi

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No