

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

Date of decision: 10.03.2017

CWP No.4968 of 2017

Bhupinder Singh

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Amritsar & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ajit Singh Sodhi, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

An argument based on Section 25-H of the Industrial Disputes Act, 1947 (for short 'the Act') conferring right to notice and offer of re-entry to service would find no place in the facts and circumstances of this case. The petitioner was appointed as a Seasonal Gauge Reader on 15.04.1985 and his services were terminated on 15.10.1989.

This is not the first time that the petitioner has come to Court. He was a party to Reference No.145 of 1998 in which the petitioner challenged the order of termination and sought reinstatement with consequential benefits. The Presiding Officer, Labour Court, Amritsar dismissed the reference by passing Award dated 19.01.2005 (Annex P-6). Bhupinder Singh was unable to prove in those proceedings that he had worked for 240 days preceding the date of termination and the finding was returned that compliance of Section 25-F of the Act was not necessary. Again, the petitioner obtained a reference on the same dispute and grievance

which he withdrew on 24.02.2012 in the Lok Adalat and no permission was taken to file a fresh reference or re-agitate the matter.

The present proceeding arises out of the third reference bearing Reference No.R-36 of 2014. The reference was now in the context of Section 2 A of the Act, as though it was still open, and the issue referred by the labour commissioner was; “whether termination of the services of Bhupinder Singh has been made by the Management illegally and unlawfully? If so, to what relief and to which extent he is entitled for?” There was, however, no reference under Section 25-H of the Act which issue has been pressed for the first time in the present proceedings.

The Labour Court for very good reason has come down heavily on the workman observing, and rightly so, that he should be penalized with heavy fine for a matter which was *res judicata* under Section 2-A read with Section 10(1)(c) of the Act and the final Award passed in the year 2005. Once the Labour Court has found no defect in the termination of the workman, a Seasonal Gauge Reader, in the earlier proceedings where the issue was *integra*, nothing remained to be traversed all over again in Reference No.R-142 of 2008 and the order passed in 2012 withdrawing the reference on the statements of the parties. The statement of Bhupinder Singh recorded on 23.02.2012 in Reference No.R-142 of 2008 reads as follows:

“Stated I was working as Class III employee with the Management and served about five years, then my services were terminated on 15.10.1989. Now my reference is pending since 2008. I do not want to proceed further in this reference. However, the request is made to Sh. Ajit Singh, S.D.O. present in Court in case any vacancy accrues with the Management in future, then I may be adjusted.”

A request had been made to the S.D.O., present in Court that in case any vacancy arises in future, the workman may be adjusted. A

statement made by a S.D.O. is not binding on the Department unless he has written instructions. Ajit Singh, S.D.O., did not make any statement and even if he did, it would not bind the Department without written authority. The order dated 24.02.2012 [in reference of 2008] passed in the Lok Adalat by the Presiding Officer, Industrial Tribunal, Amritsar shows only a request, which was not translated into an order. The statement of Ajit Singh, S.D.O. is on record of the file, which reads as follows:

“Stated I have heard the statement of workman Bhupinder Singh, whose case for reinstatement has already been declined vide order dated 19.01.2005 passed by the Court of Ms. Harpreet Kaur Jeewan, the then Presiding Officer, Amritsar. Copy of which is on the file. Accordingly, he is not entitled for any benefit, but in view of the statement of workman in case in future Government gives the instructions to us and vacancy accrues, then the case of workman will be considered on merits/preferential benefits.”

The statement is subject to consideration on merits and gives no right to Bhupinder Singh *per se* to bounce back in the arena of litigation. The structure of Section 25-H in the context of the protections it affords is of little value to a workman to claim reinstatement into Government service albeit on seasonal basis. The time gap between termination and invocation of provisions of Section 25-H will, by the very nature of things, bring in 3rd valuable party rights vesting in the intervening years and future vacancy would have to be thrown open to the public for selection on open merit where the claimant may have a right to compete, but can be given no preference in the matter of employment against a public post. Therefore, the gap between the termination and request/offer of re-entry must not be unreasonably delayed since the employer when it is State or ‘other authority’ has to contend with in the matter of public appointments to conform to the

constitutional values in Articles 14 & 16 of the Constitution which provisions do not apply to private employment and this is where the difference lies in operating Section 25-H of the Act. Like the Labour Court did, I too would refrain myself from penalizing the workman with heavy fine, but would dismiss the petition, as it has to be without saddling the petitioner with exemplary costs. I cannot praise him for his litigative stamina and marathon litigation testing the patience of courts three times over. Only the first round was justified.

Ordered accordingly.

10.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*