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

CWP-10446 of 1990 [O&M]
Date of Decision: August 08, 2018.

The Punjab State Coop. Supply and Marketing
Federation Ltd.

....Petitioner.

Versus

Ramesh Kumar and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Vikas Singh, Advocate,
for the petitioner.

Mr. T.P.S. Tung, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Present writ petition is challenge to the award dated 27.03.1990 (Annexure P/5) passed by Industrial Labour Court, Bathinda whereby the award was pronounced in favour of Ramesh Kumar-workman that he is entitled to reinstatement with continuity of service and full back wages.

2. Facts relevant for the purpose of decision of the present writ petition; that Ramesh Kumar, workman (respondent No.1 herein) was initially appointed as Clerk on 09.10.1984 in the Markfed Modern Rice Mill, Baghapurana and he worked till March, 1987 regularly, when his services

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were terminated without complying with the provisions of the Industrial Disputes Act, 1947 (for short, 'the Act'). The termination was challenged by the workman and during the pendency of the proceedings, the parties arrived at a compromise on 17.03.1988 and on the basis of the said settlement, workman was taken back in job with continuity of service, but without back wages. Subsequently, his services were again terminated on 08.04.1989 without issuance of any notice for payment of any compensation for which reference was made to learned Labour Court, Bathinda.

3. The management had come with the plea that the petitioner has a unit/ establishment at Bhaga Purana, which is a rice sheller and the nature of job is seasonal. The work force was being engaged for the specific season for rice shelling. Engagement of labourer always depend upon the nature and capacity of work to be done in the rice sheller. The services were being taken by the management of the Markfed Modern Rice Mill, Bagha Purana. Respondent-workman was never employed by the head office and he was not issued any appointment letter. His name was not mentioned in the record of the Markfed. He was being paid wages at the rate of Rs.950/- per month. The workman was taken in the employment through labour contractor when the season started and after finishing of the season, he was asked to go along casual workers like the other workers.

4. Learned Tribunal has completely ignored all these facts while pronouncing the award.

5. Learned counsel for the parties have been heard at length.

6. Taking the case from undisputed fact that respondent-

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workman remained employed from 09.10.1984 to March, 1987 as Clerk and his services were terminated in March, 1987. Subsequently, there was settlement between the workman and management on 17.03.1988 and the workman was taken back in employment on 03.10.1988, but no payment was to be made towards back wages. Again his services were terminated on 08.04.1989 without payment of retrenchment compensation.

7. Though, learned counsel for the petitioner had taken the plea that the workman was engaged in a seasonal industry and his employment was not continuous, rather his employment was through a contractor, but no record has been produced by the management before the Tribunal indicating that, in fact, the engagement of the respondent-workman was for a specific season only. Rather, as per settlement dated 17.03.1988, he was taken back in employment with continuity of service, but without payment of back wages. The management has failed to produce any record of employment though his employment with the petitioner was proved on the file on the basis of facts as well as settlement dated 17.03.1988. The termination of the services of the workman on 08.04.1989 after continuous employment from 09.04.1984 is without payment of any retrenchment compensation or issuance of any show cause notice. Learned Industrial Tribunal had ordered for reinstatement of the workman with continuity of service and back wages.

8. Learned counsel representing the management has taken the plea that the payment of back wages under Section 17-B of the Act has already been made in compliance with orders passed by this Court. Respondent-workman has not performed his duty during long span of his

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service and there is no question of reinstatement with continuity of service of the petitioner at this stage.

9. Considering all the facts that the respondent-workman had worked for a period of about 5 years and his services were terminated without payment of any retrenchment compensation and the workman is out of job for the last about 30 years, the best course in such like cases would be to compensate the respondent-workman with lump-sum compensation.

10. In **Municipal Council, Dina Nagar Tehsil & Distt. Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015(10 PLR 465**, Hon`ble Full Bench of this Court has held that the reinstatement in service and continuity of service with back wages is not automatic, rather the Labour Courts are supposed to look into various circumstances. Hon`ble Full Bench observed 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.”

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11. In view of the present set of facts also, award of lump sum compensation in lieu of reinstatement with continuity of service would be best suitable remedy and accordingly, the award passed by learned Labour Court dated 27.03.1990 (Annexure P/5) is modified to the extent that the respondent-workman shall be entitled to lump-sum compensation of Rs.2.00 lakhs for his five years' service with the petitioner-Management. The said payment shall be made by the petitioner to the workman within a period of two months from day, failing which the respondent-workman shall also be entitled to receive interest @ 9% per annum.

12. The writ petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

August 08, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes