

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

CWP-9171-2001

Date of Decision:03.04.2018

State of Haryana

... Petitioner

Vs.

Rajesh Kumar and another

... Respondents

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

Present : Mr. G.S. Wasu, Addl. A.G. Haryana.

Ms. Alka Chatrath, Advocate
for respondent No.1.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 2.2.2001 (Annexure P-4).

2. Learned counsel for the petitioner submitted that respondent No.1 was appointed as a Mali-cum-Chowkidar on 1.10.1995. His services were terminated on 1.4.1997. Thereafter, he raised an industrial dispute and it was decided in his favour on 2.2.2001 to the extent that he is entitled for reinstatement with continuity of service and full back wages. Labour Court has erred in extending the benefit of reinstatement with continuity of service and back wages for the reasons that respondent No.1 appointment was on ad-hoc basis as a Mali-cum-Chowkidar on 1.10.1995. Thereafter, he has no right to claim over the post. He was not discharging the duties of the post against any sanctioned post. Therefore, Labour Court has erred in extending the benefit of reinstatement with continuity of service and back wages. He has also relied on the decision of the Full Bench of this Court rendered in LPA No.754 of 2010 decided on 10.10.2014; MC Dina Nagar v. Presiding Officer and another to say that where the principles have been laid down that an ad-hoc employee is not entitled for reinstatement if he is not

qualified or eligible to hold the post in accordance with the rules of recruitment. No doubt respondent No.1 was reinstated pursuant to the award dated 2.2.2001 and from 3.2.2004 he is discharging the duties of the post held by him but still at the best he is entitled for compensation and not for reinstatement as ordered by the Labour Court on 2.2.2001.

3. Per contra, learned counsel for respondent No.1 submitted that Labour Court has held that termination is illegal. In other words, there is violation of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”). There is no interim order against the award in the present petition. Petitioner has reinstated respondent No.1 on 3.2.2004 and he is discharging the duties of the post held by him even to this day. Therefore, the principles laid by the Full Bench of this Court as relied upon by the learned counsel for the petitioner as well as in the case of **B.S.N.L** v. **Bhurumal**; (2014) 7 SCC 177 are not attracted having regard to the factual aspects like dates and events to the extent that petitioner has implemented the award dated 2.2.2001 on 3.2.2004.

4. Heard the learned counsel for the parties.

5. Petitioner is not disputing the order of termination is in violation of Section 25-F of the Act. Therefore, one has to draw inference that termination of the respondent No.1 is in violation of Section 25-F of the Act. No doubt respondent No.1 services have been dispensed on 1.4.1997, however, by virtue of award dated 2.2.2001, he has been taken back to duty on 3.2.2004. In view of these facts and circumstances, cited decisions (supra) are not attracted as long as termination order is held to be in violation of Section 25-F of the Act. The aforesaid principles are not applicable that too when the factual aspects are that respondent No.1 has

been taken back to duty on 3.2.2004 and he has been discharging the duties of the post even to this day. Only interference can be called for in respect of extending the benefit of full back wages. Respondent No.1 has not worked from 1.4.1997 till 3.2.2004. Therefore, respondent No.1 is not entitled for full back wages during the period i.e. from 1.4.1997 to 3.2.2014. At the best he is entitled to 25% of the back wages. To that extent, award passed by the Labour Court dated 2.2.2001 is modified.

6. Accordingly, petition stands allowed in part.

03.04.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**