

CWP No. 10976 of 2014

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

CWP No. 10976 of 2014

Date of Decision: 21.11.2018

Kanhiya Lal

..... Petitioner

Versus

Presiding Officer, Central Government Industrial Tribunal-cum-Labour
Court-I, Chandigarh and others

..... Respondents

(2) **CWP No.10492 of 2015(O&M)**

Serva Haryana Gramin Bank

..... Petitioner

Versus

Presiding Officer, Central Government Industrial Tribunal-cum-Labour
Court-I, Chandigarh and another

..... Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rohit Ahuja, Advocate,
for the petitioner (in CWP No.10976 of 2014) and
for respondent No.2 (in CWP No.10492 of 2015)
Mr. Bhushan Bhatia, Advocate,
for respondents No.2 &3 (in CWP No.10976 of 2014)

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of both the above noted cross writ
petitions which are connected.

2. The challenge in this petition is to the Labour Court award dated
17.01.2014 (P-4), whereby the reference made by the Government was
decided against the workman, holding that he was in employment for less

than one year and 240 days of service as required by section 25-B of the Industrial Disputes Act, 1947 (for short the Act), hence the provisions of section 25-F of the Act is not attracted. The Labour Court has declined the reference by applying the principles laid down in Management of Divisional Engineer Telecommunications, Mahaboobnagar vs. Venkataiah, 2007(112) FLR 24 while holding that mere completion of 240 days of continuous service in a year cannot by itself form the basis for directing regularization of service of the workman.

3. The Labour Court has returned a finding that neither any appointment letter was issued to the workman nor any termination letter was passed. On advertisement of vacancies, the workman had also applied but his application form was rejected as he was not found eligible. However, a finding has been recorded by the Labour Court that: “it appears that the workman worked from 02.01.2000 to 26.09.2000. The workman was not appointed as per rules framed for recruitment.”

4. The petitioner's case set up under section 25-F of the Act has been negated. Learned counsel for the petitioner argued that the Labour Court has wrongly interpreted the provisions of sections 25-B and 25-F of the Act while concluding that the workman was in employment for less than a year. He further submitted that provisions of section 25-B (2) of the Act provide that where a workman is not in continuous service for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year, if workman during the period preceding 12 calendar months has actually worked for not less than 240

days. Learned counsel argued that provisions of S.25-F are clearly applicable as the workman has completed 240 days in a year and neither notice nor any retrenchment compensation was paid to the workman before terminating his services.

5. Looking to the brief period of service, in my view, the present matter does not qualify as a case justifying reinstatement even if there is an error in distinguishing a year of service and the concept of 240 day to make a year by fiction. A violation of the provisions of section 25-F of the Act, although illegal but still would not lead to automatic reinstatement as reasserted by the Supreme Court in '*Assistant Engineer, Rajasthan Development Corporation & Anr. vs. Gitam Singh*' (2013) 5 SCC 136.

6. On hearing learned counsel for the parties, this Court feels that on denial of reinstatement the petitioner cannot be left without relief altogether. The workman can instead be compensated in terms of money in lieu of reinstatement. The period of service considered by the Supreme Court was about 240 days in *Gitam Singh* in which the Supreme Court found appropriate to award Rs.50,000/- compensation to a daily wage employee. Nevertheless, monetary relief has to be constantly adjusted with the passing time and the rising price index and relief has to be tuned by the Court. In *Municipal Council, Dina Nagar v. Presiding Officer, Labour Court, Gurdaspur Anr.*, 2015(1) RSJ 765 a broad rule has been evolved by the Division Bench recommending compensation of Rs.1 lakh to Rs.1.25 lakh for every year of completed service prior to retrenchment/termination.

7. Keeping in view package in *Dina Nagar* case, I think the ends of

justice would be served if an amount of Rs. One Lakh is given to the workman as compensation in lieu of reinstatement. I would order accordingly by modifying the award of the Labour Court dated 17.01.2014(P-4).

8. Resultantly, this writ petition is partly allowed. A direction would issue to the respondents to pay Rs. One Lakh as compensation to the petitioner within 2 months from the date of receipt of a certified copy of this order, failing which interest would run on the amount in default at the rate of 12% per annum till realization.

(RAJIV NARAIN RAINA)
JUDGE

21.11.2018

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