

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

231

**CWP-16450-2015 (O&M)
Date of Decision : 28.11.2018**

Management Marumal Public School

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II,
Gurgaon and another

...Respondents

CORAM:HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Sandeep Kumar Rana, Advocate for the petitioner.

None for respondent No.2.

RAJIV NARAIN RAINA, J.(ORAL)

First order passed in this case was on 11.08.2015 while issuing
notice of motion. The order reads as under:

*"Mr.Malik learned senior counsel submits
violation of Section 25-F of the Industrial Disputes Act,
1947 on the part of his client but at the same time,
pleads that the management has lost confidence in the
workman who was a driver with many complaints
against him from children/ parents / staff for driving the
school bus negligently. The period of service is 3 years.
He submits that this is not a case for reinstatement but at
best one of compensation in lieu of reinstatement.*

*Notice of motion to respondent No.2,
returnable by 8.10.2015.*

Service of respondent No.1 is dispensed with.

Notice re.: stay.

In the meanwhile, the reinstatement shall remain stayed.

So far as 40% back wages awarded by the Labour Court, they will not be open to execution for the present since this Court is seized of the matter and still to consider what in this case represents just and appropriate compensation."

Notice issued to contesting respondent No.2 was served as per office note dated 05.10.2015. Thereafter, office notes are to the effect that reply has not been filed. It has been recorded on 05.02.2016 that service on respondent No.2 is complete, but none appears on his behalf. The same was the position on 29.08.2016 when co-ordinate bench gave one more opportunity for appearance. Again on 24.10.2017 none appeared for the respondents. However, on 26.02.2018 the presence of Mr. Neeraj, Advocate for respondent No.2 has been recorded. He made a statement that he intends to file power of attorney in the Registry. None has been filed. Neither in the record of this file nor in the tablaq is there any memorandum of appearance or vakalatnama and it would be well nigh impossible to trace who Mr. Neeraj, Advocate is.

Thereafter, case was adjourned to 10.07.2018. Request was made on behalf of the petitioner and case was adjourned to 28.11.2018 but again no one entered appearance for the respondent. The position is same again today. In view of the above, respondent no. 2 is proceeded against *ex-parte*.

I have heard Mr. Malik, learned Senior counsel in challenge to the award. The period of service of the ex parte respondent as Driver was about 3 years. There is an admitted non-compliance of Section 25-F of the Industrial Disputes Act, 1947. There is sufficient indication in case law precedents that reinstatement to service would not follow automatically with

the declaration the termination was bad for breach of safeguards provided by Section 25-F of the Act as many factors are required to be considered while moulding the relief. In this case, the Management argues it had lost confidence in the respondent, a driver of the school bus as it had received many complaints time and again against his work and conduct from students, parents, staff etc. to rule taking him back in service.

The labour court has awarded reinstatement with continuity of service and 40% back wages from the date of termination i.e. 09.09.2010 till his reinstatement by award dated 03.06.2015 passed by the Presiding Officer, Industrial Tribunal cum Labour Court-II, Gurgaon in favour of the workman finding the termination illegal.

Having considered the arguments of Mr. Malik, I agree with him and this is not a fit case for reinstatement and instead compensation in lieu reinstatement in the more appropriate course of action to adopt. Therefore, in order to do substantial justice, this court is of the view that a sum of ₹ 1.50 lakhs as compensation would be sufficient for 3 years of service while keeping in view the totality of circumstances.

Accordingly, this petition is partly allowed and the award is modified to read that in lieu of reinstatement petitioner would be entitled to compensation of ₹ 1.50 lakhs to be paid by the Management to the second respondent-workman to settle the dispute. This amount be deposited within a period of one month before the Registrar General of this court from date of supply of the certified copy of this order, which amount will be kept in an interest bearing fixed deposit in a nationalized bank.

Whenever respondent knows of this order, he may apply for release of the amount in his favour. A copy of this order be sent to the

Presiding Officer, Industrial Tribunal-cum-Labour court, Gurgaon to be placed on the file of the case and copy of this order also be sent to the workman by the Registry at the address available on record.

28.11.2018

pooja saini/Vimal

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>