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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8391-2011

Date of Decision : August 9, 2018

Nathu Ram

.... Petitioner.

Versus

Presiding Officer, Labour Court,
Union Territory, Chandigarh and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Aman Bahri, Advocate
for the petitioner.

Mr. Suvir Sehgal, Senior Standing Counsel
with Mr. Prashant Gupta, Advocate
for Mr. Suman Jain, Advocate,
for respondent No. 2.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash impugned award dated 13.08.2009 (Annexure P/12) passed by learned Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh (for short, "**the Tribunal**"), whereby learned Tribunal declined reinstatement alongwith back wages to the petitioner-workman.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner-workman was appointed as a Mali on 11.10.1991 on adhoc basis and his appointment was temporary on daily wages basis for

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89 days. His name was sponsored by the Employment Exchange, U.T. Chandigarh. The services of the workman were terminated with effect from 31.12.1993 vide letter dated 4.1.1994 and by that time, the workman had already put in satisfactory service of two years and three months. Neither any show cause notice was issued to the workman before termination nor any compensation was paid to him. The petitioner raised an industrial dispute on the basis of which, reference was made to the Tribunal. Learned Tribunal vide award dated 13.08.2009 (Annexure P/12) returned the finding that in view of total length of service being 2 years and 3 months, the workman was not entitled to reinstatement in service, rather he was held entitled to compensation of Rs. 1.00 lakh. The petitioner received the compensation amount without any objection and thereafter preferred the present writ petition that he was entitled to reinstatement with continuity of service and full back wages as persons junior to him were taken back in employment on regular basis.

3. The respondent-Management contested the claim of the petitioner on the ground that in compliance of the impugned award, total compensation of Rs.1,10,021/- was paid to the petitioner and the said payment was made to him in September, 2010 which was accepted by the workman without raising any objection or protest. Otherwise, the appointment of the workman was for a period of 89 days on fixed salary of Rs.575/-. The award dated 13.08.2009 was passed by the Tribunal in accordance with law and keeping in view the length of service and all the attending circumstances, the Tribunal had awarded a lump-sum compensation of Rs.1.00 lakh. The present writ petition is not maintainable

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and is without any merit and same be dismissed.

4. Having considered the submissions made by learned counsel for the parties and appraisal of the record and the facts of this case, this Court is of the considered view that the petitioner-workman was awarded a lump-sum compensation of Rs.1.00 lakh for total length of service of 2 years and 3 months. The petitioner has received the said compensation without any objection in the year 2010. There was no reason or occasion for the workman to file the present writ petition in the year 2011 and on that account, the present writ petition is not maintainable and deserves dismissal.

5. 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

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reinstatement as such, even though the retrenchment was void.”

6. The same thing was rightly done by the Tribunal in the present case while awarding very fair and reasonable lump-sum compensation to the workman vide impugned award. The amount of compensation was received by the petitioner without any objection.

7. Resultantly, the present writ petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 9, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes