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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : October 06, 2018

1. CWP No.24063 of 2014

Sandeep Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

2. CWP No.24117 of 2014

Jitender Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

3. CWP No.24121 of 2014

Sanjay Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

4. CWP No.24124 of 2014

Maina Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

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5. CWP No.24127 of 2014

Vinod Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

6. CWP No.24140 of 2014

Vishal Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

7. CWP No.24142 of 2014

Devender Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

8. CWP No.24153 of 2014

Amit Kumar Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another.
.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sushil Jain, Advocate for the petitioners.

Mr. Pankaj Mulwani, Deputy Advocate General, Haryana.

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SHEKHER DHAWAN, J.

Challenge in all these above titled eight writ petitions is to different awards passed by Industrial Tribunal-cum-Labour Court, Panipat whereby the petitioners-workmen have been held entitled to lump-sum compensation. As the issue with regard to entitlement of lump-sum compensation involved in all these writ petitions is the same, therefore, all these writ petitions are being taken up together with the consent of learned counsel for the parties and being disposed of by this common judgment.

2. For facility of reference, facts are being taken from CWP-24063-2014 titled **Sandeep Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another.**

3. 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 award dated 02.06.2014 (Annexure P/4) whereby learned Industrial Tribunal-cum-Labour Court, Panipat, (for short, "learned Tribunal") awarded lump sum compensation to workman (Sandeep) amounting to Rs.30,000/- in lieu of reinstatement, continuity of service and back wages.

4. Facts relevant for the purpose of decision of this writ petition; petitioner – Sandeep joined as Safai Karamchari on 1.8.2008 and served the Management till 14.07.2011 and completed more than 240 days of service in the preceding calendar year. He was drawing monthly salary of Rs.4,500/-. The petitioner alongwith other workers raised demand of minimum wages and the respondent-Management terminated their services without without issuing any show cause notice or payment of

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retrenchment compensation.

5. The petitioner raised industrial dispute and reference was made before learned Tribunal. Learned Tribunal after considering the version put-forwarded by the petitioner-workmen and the Management decided the reference in favour of the workmen, but in lieu of ordering reinstatement, continuity of service and back wages, passed order for lump-sum compensation of Rs.30,000/-.

6. At the time of arguments, learned counsel for the petitioner contended that the petitioner had continuously served the Management for a period of three years and had completed 240 days of service in the preceding calendar year and learned Tribunal had rightly given the finding to that effect that the workman had already put in continuous service for a period of three years and there was relationship of master and servant between the parties and they were not employees of the Contractor even, but still ordered for payment of lump-sum compensation instead of ordering reinstatement with full back wages. In support of his arguments, reliance was placed upon the judgments of Hon`ble Supreme Court in **Bhilwara Dugdh Utpadak Sahakari S. Ltd. vs. Vinod Kumar Sharma Dead by LRs and others, 2011 AIR (SC) 3546; Secretary, Haryana State Electricity Board vs. Suresh, 1999 AIR (SCW) 892; Krishan Singh vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), 2010(3) SCC 637; Ramesh Kumar vs. State of Haryana, 2010 AIR (SC) 683; Devinder Singh vs. Municipal Council, Sanaur, 2011 (4) AIR Jhar R.318.**

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7. Learned counsel for the petitioner-workman also contended that even the compensation awarded by learned Tribunal is just meager. The petitioner had completed three years of continuous service, still he was paid paltry sum of Rs.30,000/- only as lump-sum compensation.

8. While arguing on these points, learned State counsel contended that the petitioners herein was not the employee of the respondent, rather they were working with the Contractor and the Contractor had appeared before learned Tribunal and admitted that he used to supply the man-force and they were employed by him. Only the work-force used to work under the supervision and control of the Management and as such, there was no relationship of master and servant between respondent No.2 and workmen and learned Tribunal has not considered all these aspects while deciding the reference. More so, the services of the workmen were terminated in the month of November, 2011 and there was no work available with respondents and by now a period of more than seven years has already passed and during that period, the petitioners have not rendered any service to the Management and no job is available against which the petitioners can be accommodated. So, the reinstatement would not be appropriate and the only option available is payment of compensation, which learned Tribunal has already awarded.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record as well as the judgments referred to and relied upon, this Court is of the considered view that most of the facts are admitted in this case that the petitioners had worked for a period of

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about three years and they had already put in continuous service of more than 240 days in the preceding calendar year with the respondents and there was relationship of employer and employee between the parties and the termination of the workmen was not legal and justified. The facts of the cases relied upon by learned counsel for the petitioners are somewhat different than the facts of the present set of cases, as the workmen herein have put in about three years of service and the stand taken by the respondents is that there is no job available with the Management against which they could now be accommodated. So, there cannot be any question of reinstatement of the workmen at this stage.

10. Identical matter was before Hon`ble Apex Court in **Asst. Engineer, Rajasthan Dev. Corp. and Anr. Vs. Gitam Singh, 2013(5) SCC 136**, wherein, Hon`ble Apex Court had taken the view that in such like cases of employment of shorter duration, reinstatement with full back wages is not automatic and if the judicial discretion exercised by the Labour Court suffers from serious infirmity, the same is liable to be corrected and modified because in such cases, compensation is the most adequate relief. However, in the cases in hand, even adequate compensation has not been awarded.

11. Identical matter was before a Division Bench of this Court in **Sunil Kumar Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurdaspur and others, LPA No. 2078 of 2014**, decided on 19.11.2015 where the workmen were awarded compensation to the tune of Rs.30,000/- for each completed year of service or part thereof.

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12. Resultantly, applying the aforesaid principles of law to the present case, the workmen shall be entitled to compensation @ Rs.30,000/- per annum for each completed year of service or part thereof. Respondent-Management shall be liable to make payment of amount of compensation so assessed, within a period of three months from today, failing which the petitioners shall be entitled to interest @ 9% per annum from today.

13. Resultantly, the writ petitions stand partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 06, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes