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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17954-2018

Date of Decision : July 31, 2018

Rajinder Parshad

.... Petitioner.

Versus

Presiding Officer, Labour Court,
Bathinda and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by : Mr. K.B.Raheja, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present writ petition under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash impugned award dated 11.08.2017 (Annexure P/7), whereby, Labour Court, Bathinda awarded 25% back wages while ordering reinstatement of the petitioner.

2. Petitioner was appointed as a Store Keeper on 8.8.1973 at Patiala and he worked at various places. He joined the respondent No. 3 department on 12.1.1983 and served the respondent-Management. Vide order dated 8.2.1984, his services were terminated w.e.f. 24.08.1983. The petitioner issued the respondent-department a demand notice dated 12.05.1994 (Annexure P/1) and finally reference was made to the Labour Court.

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3. Respondent-Management filed written statement admitting that no charge sheet was issued nor any enquiry was held. Learned Labour Court pronounced the award dated 21.11.2000 (Annexure P/5) and the termination of the petitioner was set-aside and he was reinstated in service with continuity of service, but without back-wages.

4. Petitioner approached this Court by way of CWP-14175-2003, which was decided on 17.4.2017 (Annexure P/6) and the matter was remanded to the Labour Court, Bathinda only on the issue of back wages and it was specifically mentioned that the “remand is open only to determine the issue of back wages without allowing parties to adduce further evidence except to base conclusions on the material available on record but the remand proceeding will not touch reinstatement and continuity...”

5. After remand, learned Labour Court vide award dated 11.08.2017 (Annexure P/7) held the petitioner entitled to back wages to the extent of 25% and the respondent-department was directed to pay back wages to the workman as per record subject to departmental calculations within three months from receipt of copy of the order, failing which, he shall be entitled to interest @ 6% per annum from the date of reference till realization but with no order as to costs.

6. Aggrieved by the impugned award dated 11.8.2017 (Annexure P/7), the petitioner has approached this Court again by this writ petition.

7. At the time of arguments, learned counsel for the petitioner submitted that it is settled proposition of law that full back-wages cannot be

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denied to the workman merely because the workman had found some employment during the pendency of reference proceedings. He has placed reliance upon decision of this Court in **Sudha Rani Vs. Union of India, 2002(1) SCT 299.**

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that certain facts are not disputed that the petitioner has been allowed reinstatement with continuity of service with 25% back wages. Hon`ble Supreme Court in **State of U.P. Thru. Secy. Irrigation and Anr. Vs. Km. Shashi Joshi, 2015(3) SLR 558; Director General, ICMR Vs. D.K.Jain and another, 2007(2) SCT 682; and Ram Singh Vs. State of Haryana and Ors, 1998(8) SCC 738** has upheld that in case of reinstatement, back wages are not automatic, rather the Court has to see, in the given facts and circumstances of each case, whether any back wages are to be allowed and if so, to what extent. In the present case, the Tribunal while applying its judicious mind and considering the fact that the respondent-department had issued various notices through publication asking the petitioner to report and to join service and his absence was without any permission, the petitioner failed to join his duties. It was not the case of the workman that he had not been gainfully employed during the said period and no such plea was taken even in the demand notice. Taking all these facts into consideration, learned Labour Court has rightly restricted the back wages to 25% and there are no grounds to interfere in the impugned award.

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9. In view of the above, the present writ petition lacks merit and stands dismissed *in limine*.

(SHEKHER DHAWAN)
JUDGE

July 31 , 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes