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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26214-2014
Date of Decision : Sept. 21, 2018

Jaibir

.... Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Hisar and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Kanhiya Soni, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
for the respondents.

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 for modifying the award dated 14.10.2011 (Annexure P/4) passed by Industrial Tribunal-cum-Labour Court, Hisar (for short, "learned Tribunal"), whereby petitioner was ordered to be reinstated, but the relief of continuity of service has been denied to him.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner-workman joined the service of the respondent-Management on 16.6.1996 and continued upto 31.05.2001. His services

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were verbally terminated on 1.6.2001 without issuing any show cause notice or payment of retrenchment compensation, in violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short "**the Act**"). The petitioner raised an industrial dispute and the matter was referred to learned Tribunal.

3. The respondent-Management had taken the plea that the petitioner does not come under the definition of "workman" as laid down under Section 2(s) of the Act and he had worked up to 20.2.1998 and not upto 31.05.2001 as claimed by him. More so, the petitioner had not completed 240 days in the preceding calendar year so as to claim benefit under Section 25-F of the Act and prayed that the claim raised by the workman be declined.

4. Learned Tribunal returned the finding that engagement of the petitioner as workman with the respondent is not admitted. Thereafter, the petitioner had moved an application to summon the relevant record i.e., attendance register and muster roll, but no such record was produced except the muster roll for the year 1997-98, nor there was any plausible explanation for not producing the same and adverse inference was drawn against the management. In view of that, learned Tribunal ordered reinstatement of the workman but relief of continuity of service and back wages was denied to him.

5. At the time of arguments, learned counsel for the petitioner contended that since the case of the petitioner was accepted by learned Tribunal and his engagement with the Management as workman and

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having worked for a period of over 240 days was duly proved before learned Tribunal, there was no justified reason for learned Tribunal not to award continuity of service and back wages as well. On this point, reliance was placed upon the judgments of Hon`ble Apex Court in **Gurpeet Singh Vs. State of Punjab and others, 2003(2) SCT 226** and **Jasmer Singh Vs. State of Haryana and anr. Civil Appeal No. 346 of 2015, decided on 13.1.2015.** Reliance was also placed on the judgment of a Coordinate Bench of this Court in **Gurbachan Singh Vs. The Presiding Officer and others, CWP No. 6491 of 2011, decided on 22.08.2012.**

6. Learned State counsel while arguing this point contended that though the continuous service of the petitioner for 240 days with the Management was not proved before learned Tribunal, the petitioner is not entitled for reinstatement. He also contended that otherwise, it was the discretion of learned Tribunal to consider all the facts while granting the relief and in the present case, learned Tribunal has rightly not awarded the relief of continuity of service and back wages as the petitioner was not entitled to the same.

7. Learned State counsel placed reliance on the judgment of Hon`ble Apex Court in **Manager, R.B.I., Bangalore Vs. S. Mani & Ors., 2005 AIR (SC) 2179.**

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record and the judgments referred to and relied upon by learned counsel for both the parties, this Court is of the considered view that there is no dispute on the facts that the petitioner

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was employed by the Management on 16.6.1996 though his date of termination is disputed in this case. The petitioner himself as not been able to prove his employment for a period of 240 days of continuous service, but learned Tribunal rightly observed that as relevant record was summoned by the workman and the same was not produced by the Management, adverse inference was to be drawn against the Management and on that basis, relief of reinstatement was granted and continuity of service was not given.

9. In **Gurpeet Singh's case (supra)**, Hon`ble Apex Court was seized of the controversy and in that case, the suit was dismissed by the Court of first instance and the lower Appellate Court rejected the reinstatement to the workman but held that the workman would not be entitled to any arrears of salary for the period for which he had not served and the High Court held that workman would not be entitled to any arrears of salary and on its own ordered that the plaintiff would not get his continuity of service. Therefore, the facts of the said case are distinguishable as in the present case, learned Tribunal while exercising its discretion on the basis of facts and material before the Court ordered for re-instatement and denied the continuity of service and back wages.

10. Identical matter was before the Apex Court in **Secretary, State of Karnataka and Ors. Vs. Umadevi and others, AIR 2006 (SC) 1806.**

11. In view of the above, learned Tribunal has rightly exercised the discretion on the basis of facts and material available on the file as also the

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law. There is no merit in the present writ petition and the same stands dismissed

(SHEKHER DHAWAN)
JUDGE

September 21, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes