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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-5643-2013
Date of Decision : October 15 , 2018

The Xen/P.W.D. (B&R), Malerkotla, Sangrur
and another.

.... Petitioners.

Versus

Presiding Officer, Industrial Tribunal, Patiala
and another.

.... Respondents.

2. CWP-5646-2013

P.W.D. (B&R), Malerkotla and another.

.... Petitioners.

Versus

Presiding Officer, Industrial Tribunal, Patiala
and another.

.... Respondents.

3. CWP-5651-2013

The Executive Engineer, P.W.D./(B&R), Malerkotla
and another.

.... Petitioners.

Versus

Presiding Officer, Industrial Tribunal, Patiala
and another.

.... Respondents.

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4. CWP-5662-2013

P.W.D./(B&R), Malerkotla and another.

.... Petitioners.

Versus

Presiding Officer, Industrial Tribunal, Patiala
and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Bhavna Gupta, Advocate
for the petitioner-State.

Mr. Vikas Singh, Advocate,
for respondent No/Workmen.

SHEKHER DHAWAN, J.

Challenge in all these above titled four writ petitions is to the different awards passed by learned Industrial Tribunal, Patiala, dated 17.10.2012 whereby the respondent-workmen have been held entitled to reinstatement with continuity of service and back wages. As the issue involved in all these writ petitions is the same, therefore, with the consent of learned counsel for the parties, the same are being disposed of by this common judgment.

2. For facility of reference, facts are being taken from CWP-5643-2013 titled **The Xen/P.W.D. (B&R), Malerkotla, Sangrur and another Vs. Presiding Officer, Industrial Tribunal, Patiala 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

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dated 17.10.2012 (Annexure-P/1) whereby Charan Singh, respondent No.2 herein, has been held entitled to reinstatement with continuity of service and back wages.

4. As per the workman, he had put in one year and one month's service with the petitioner-Management and his services were wrongly terminated on 29.2.1984 without issuing any show cause notice or payment of retrenchment compensation. At that time, he was drawing wages at the rate of Rs. 416/- per month. The workman raised an industrial dispute and reference was made to learned Tribunal.

5. Learned Tribunal after considering the claim of the workman and stand taken by the Management, decided the reference vide award dated 17.10.2012 (Annexure P/1) whereby, he was held entitled to reinstatement with continuity of service and back wages along with interest @ 6%.

6. The petitioner-Management has filed the above titled writ petitions on the ground that learned Tribunal has not considered correct facts as the alleged engagement of respondent-workman was as daily-wager only and his appointment was on temporary basis. The continuation of the workman was subject to the availability of work and that was from year to year basis. Respondent-workman had already received wages upto 29.02.1984 i.e., upto the completion of the project for which, he was engaged and thereafter his services were dispensed with on completion of the project.

7. Learned counsel for the petitioner-State contended at the

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time of arguments that apart from that, the workman had not been able to prove his continuous employment for a period of 240 days thereby entitling him to any relief. Plea was also taken by the petitioner-State that the engagement of the workman was in the project which had already been completed on 29.2.1984 and thereafter, respondent-workman had not served the Management and there is no question of reinstatement or continuity of service and back wages. More so, for such a short period of employment, reinstatement is not the rule and at the best, some compensation can be awarded to the respondent-workman.

8. While arguing on this point, learned counsel for the respondent-workman contended that learned Tribunal has rightly recorded the finding that the service of the workman were terminated without following due procedure of law and without payment of retrenchment compensation. There are no grounds to set-aside the award passed by learned Tribunal by invoking the writ jurisdiction by this Court.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the facts that the engagement of respondent-workman was for a period of about one year in this case. After the year 1984, respondent-workman has not served the Management and as per the petitioner, they cannot be accommodated and reinstated as the Project in which they were engaged stood completed on 29.2.1984 itself. So, there is no question of reinstatement with continuity of service and back wages as per view taken by Hon`ble Apex Court in **Bharat Sanchar**

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Nigam Limited v. Bhurumal (2014) 7 SCC 177. In that case, Hon`ble Apex Court observed as under:-

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.”

10. But as is the case before the Court, the respondent-workmen had served the Management for about one year and their services have been dispensed with without complying with the mandatory provisions of Section 25-F of Industrial Disputes Act, 1947 (for short “the Act”). The Court can also not ignore the fact that the respondent-workmen have not served the Management since 1.3.1984 till date and in such like cases, payment of lump-sum compensation would be the best remedy.

11. 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

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

12. 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.

13. Resultantly, applying the aforesaid principle to the present cases, the workmen shall be entitled to compensation @ Rs.30,000/- per annum for each completed year of service or part thereof. Petitioner-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.

14. Resultantly, the impugned awards dated 17.10.2012, passed

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by learned Tribunal are modified to the extent that the respondent-workman shall be entitled to lump-sum compensation, as indicated above, and writ petitions stand partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 15, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes