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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5564-2015

Date of Decision : October 04, 2018

Municipal Corporation, Amritsar and another

.... Petitioner.

Versus

Presiding Officer, Industrial Tribunal,
Amritsar and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by Mr. Sanjeev Soni, Advocate
for the petitioner.

Mr. Amarjit Singh, 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 for quashing award dated 04.02.2015 (Annexure P/3) passed by learned Industrial Tribunal, Amritsar (for short, "learned Tribunal") whereby respondent No.2 – workman has been ordered to be reinstated with continuity of service and full back wages.

2. Facts relevant for the purpose of decision of this writ petition; that respondent-workman was employed as Tubewell Operator from 06.09.1997 to 31.08.1998 under the control and supervision of petitioner-

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department. His services were terminated without issuing any show cause notice or payment of retrenchment compensation.

3. The workman raised an industrial dispute on the basis of which, reference was made. Before learned Tribunal, the Management (petitioner herein) took the stand that the workman was not the employee of the department, rather he worked under the Contractor and there was no relationship of employer and employee between the parties. Neither the post against which the workman was employed, was advertised nor any appointment letter was issued to the workman and the demand raised by the workman against the petitioner-Management was not maintainable.

4. Learned Industrial Tribunal, after considering entire material and evidence available on the file, returned the findings that the Management though took the plea that the workman was not working under the supervision and control of the Management, rather he was working under the Contractor, but failed to prove the same. The relevant record was not produced before learned Tribunal. There was no material before learned Tribunal that the workman worked with the Contractor, namely, Gulshan Kumar. It is also not disputed that there was no advertisement for the post of Tubewell Operator nor there was any appointment order issued in favour of the respondent-workman. At any rate, learned Tribunal has rightly come to the conclusion that respondent-workman had worked from 6.9.1997 to 31.08.1998, which is even less than one year, but he has been ordered to be reinstated with continuity of service and full back wages which is under challenge by way of this writ

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petition.

5. At the time of arguments, learned counsel for the petitioner-Management took the plea that undisputedly, respondent No.1/workman worked for a total period of less than one year. In such like cases, reinstatement with back wages is not the rule, but learned Tribunal had passed the order of reinstatement with continuity of service and full back wages without considering all these facts.

6. Learned counsel for the petitioner also contended that in such like cases, at the best, the respondent-workman was entitled to lump-sum compensation, but not reinstatement, which is not automatic. On this point reliance was placed upon the judgment of Hon`ble Supreme Court in **Asst. Engineer, Rajasthan Dev. Corp. and Anr. Vs. Gitam Singh, 2013(5) SCC 136** and Co-ordinate Bench of this Court in **Municipal Committee, Kaithal Vs. The Presiding Officer, Labour Court, Ambala and others, 2015(5) SLR 133.**

7. While arguing on this point, learned counsel for the respondent-workman contended that plea was raised on behalf of the Management before learned Tribunal that the workman was appointed against a Project in the Government department. Unless, the department is able to establish that the said Project has been completed, there could be no termination of services of the workman. On this point, reliance was placed on the decision of Hon`ble Apex Court in **S.M. Nilajkar and others Vs. Telecom District Manager, Karnataka, (2003) 4 SCC 27.**

8. Having considered the submissions made by learned counsel

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for the parties and appraisal of the record and the judgments referred to and relied upon by the parties, this Court is of the considered view that most of the facts are not disputed in this case. No post of Tubewell Operator was advertised. The respondent-workman was not issued any appointment letter by the petitioner-Management and there is nothing on record to establish that appointment of the respondent-workman as Tubewell Operator was as per rules and public policy. At any rate, at the best, the respondent-workman has worked from 6.9.1997 to 31.08.1998, which comes to even less than one year.

9. The facts of the case in hand are distinguishable from the facts of **S.M. Nilajkar's case (supra)**. However, the facts of the case in hand are quite identical to the view taken by Hon`ble Supreme Court in **Gitam Singh's case (supra)** 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. Similar view was taken by the Co-ordinate Bench of this Court in **Municipal Committee, Kaithal's case (supra)**.

10. In the light of above, this Court is of the considered view that in the present case also, learned Tribunal had gone wrong while ordering reinstatement with continuity of service and full back wages for total employment of less than one year and the respondent-workman was required to be compensated with lump-sum compensation only. In the

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present case, the lump-sum compensation is assessed at Rs.40,000/-. The Petitioner-Management has already made payment of wages in proceedings under Section 17-B of the Industrial Disputes Act, 1947 (for short “the Act”) during the pendency of this writ petition and the same are subject to adjustment against the total lump-sum compensation awarded herein. But, if the payment of wages under Section 17-B of the Act are exceeding the total compensation now awarded, the same shall not be recovered from the respondent-workman.

11. Resultantly, the impugned award dated 04.02.2015 (Annexure P/3) passed by learned Industrial Tribunal, Amritsar is set-aside and the present writ petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 04, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes