

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.18246 of 2019 (O&M)
Date of decision:09.07.2019**

**Haryana Urban Development Authority
(Now HSVP) and another**

.....Petitioners

Versus

Mohinder Kumar and another

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Arvind Seth, Advocate for the petitioners.

B.S. Walia, J. (Oral)

1. Challenge in the writ petition is to award Annexure P-3 dated 19.11.2018 passed by the learned Presiding Officer, Labour Court, Ambala ordering reinstatement of the respondent-workman with continuity of service and 50% backwages with effect from the date of termination to be paid within two months from the date of passing of the award failing which the arrears of backwages would carry interest @ 9% per annum.

2. Brief facts of the case leading to the filing of the writ petition are that the respondent-workman was appointed as Field Chowkidar on daily wages on 10.2.1993 in the Estate Office, HUDA, Sector-6, Panchkula. His work and conduct was satisfactory and he worked continuously without any break. The respondent-workman filed CWP No.5758 of 2005 praying for regularization of his services in view of his having been working continuously on daily wages w.e.f 10.2.1993 thus, having rendered service of approximately 12 years.

3. The aforementioned writ petition was dismissed on 14.9.2007 by the Division Bench of this Court vide order Annexure P-4 in the light of decision of Hon'ble the Supreme Court in **Secretary, State of Karnataka and others versus Umadevi (3) and others (2006) 4 SCC 1**. However, while dismissing the claim for regularization, a direction was issued to consider the claim of the respondent-workman for non-payment of salary. Instead of considering the claim of the respondent-workman for payment of wages which were due to him, the petitioner-HUDA through its Chief Administrator passed order dated 21.11.2007 that in view of order of the High Court dated 14.9.2007, services of the respondent-workman be terminated immediately. The respondent-workman approached the authorities under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and on failure of the conciliation proceedings, the matter was referred to the Presiding Officer, Labour Court, Ambala. In the claim before the Labour Court, stand of the respondent-workman was that his services were terminated by the petitioner on 7.12.2007 without giving any notice or pay in lieu thereof nor was any retrenchment compensation given to him before terminating his services besides, his services were terminated in violation of the principle of "first come last go and last come first go" as enunciated under Section 25 of the Act.

4. In the aforementioned background, it was admitted by the petitioner-Management before the Labour Court that one Gopal and Bant Ram were employed on 11.2.1993 as dailywage labourers on DC rates that they were regularized by the management on 31.8.2004 w.e.f. 13.9.1997.

5. On the basis of the pleadings and the evidence led by the parties, the learned Labour Court held that there was no direction to terminate the

services of the respondent-workman by the Hon'ble High Court but the Management had misinterpreted the order of the Hon'ble High Court and passed order dated 21.11.2007 vide which the services of the respondent-workman were illegally terminated vide order dated 7.12.2000 without complying with the mandatory provisions of Section 25-F, 25-G and 25-N of the Act and further that the respondent-workman had not claimed regularization but only challenged his illegal termination in violation of the mandatory provisions of the Act.

6. In the light of the aforementioned background, the learned Presiding Officer, Labour Court, Ambala ordered reinstatement of the respondent-workman with continuity of service with 50% backwages with the same to be paid within two months from 19.11.2018 failing which the same would carry interest @ 9% per annum.

7. The only argument advanced by learned counsel for the petitioner is that instead of ordering reinstatement, the Labour Court ought to have granted lumpsum compensation.

8. I am afraid, I am unable to agree with the submissions of learned counsel for the petitioners.

9. Admittedly, the respondent-workman was appointed as Field Chowkidar on dailywages on 10.2.1993. Other dailywage labourers appointed by the petitioner-Management i.e. Gopal and Bant Ram on 11.2.1993 were regularized by the Management on 31.8.2004 w.e.f. 13.9.1997. However, CWP No.5758 of 2005 filed by the respondent-workman for regularization of his services was dismissed by this Court vide order dated 14.9.2007 in the light of decision of Hon'ble the Supreme Court in **Umadevi's** case (supra). However, there was no direction in the said

decision i.e. Annexure P-4 to terminate the services of the respondent-workman. In any case, if the services of the respondent-workman were to be dispensed with, the same was required to be done in compliance with the mandatory provisions of the Act. The same not having been done, the Labour Court ordered the reinstatement of the respondent-workman with continuity of service and 50% backwages with effect from the date of termination of services. Admittedly, the respondent had rendered close to 14½ years of service when his services were terminated without compliance with the mandatory provisions of the Act. The sole basis for termination of the services of the petitioner was of his writ petition for regularization having been dismissed. However, perusal of the order Annexure P-4 passed by this Court does not reveal a direction to terminate the services of the respondent-workman. In any case, before terminating the services of the respondent-workman, the petitioners were required to comply with the mandatory provisions of the Act, namely, Section 25-F etc. The same not having been done, no interference with the impugned award is called for nor has any circumstances been pointed out by learned counsel for the petitioner to show as to why the award of reinstatement with 50% backwages be converted into one for payment of compensation in lieu of reinstatement.

10. Accordingly, finding no merit in the writ petition, the same is dismissed in limine.

July 09, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

