

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

CWP No.15539 of 2016

Date of decision: 26.07.2019

Om Dass

.....Petitioner

versus

Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat, District Panipat, Haryana and others

....Respondents

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

Present: Mr. S.K. Kaushik, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.,

[1] Prayer in the writ petition is for quashing of Award (Annexure P-3) dated 16.03.2016, to the extent the learned Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as the 'Tribunal'), while holding the petitioner to have completed more than 240 days of service and termination of his service being in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') awarded lump sum compensation of Rs.45,000/- only, while rejecting the claim for reinstatement with full back wages and continuity of service.

[2] Brief facts of the case, leading to the filing of the writ petition are that the petitioner-workman filed claim statement (Annexure P-1) before the learned Tribunal that he had been working as Part Time Chowkidar in Govt. Senior Secondary School, Raison, District Karnal w.e.f. 27.09.2008 against monthly wages of Rs.1000/- per month on the assurance of the respondents that after some time, he would be made a permanent Class-IV

employee and would be paid wages as permanent employee of the government. However, his services were illegally terminated on 21.08.2012 in violation of provisions of Section 25-F & H of the Act by verbally directing him not to come on duty from 22.08.2012 without giving any notice or disclosing cause for terminating his services or giving him opportunity of being heard or for that matter paying him retrenchment compensation, despite his having completed more than 240 days of continuous service under the respondents.

[3] In the reply (Annexure P-2) to the claim statement (Annexure P-1), the respondents took up the stand that the workman had worked as Part Time Chowkidar from 27.09.2008 to 08.03.2010 in Govt. Senior School, Raison, District Karnal against honorarium paid from the Parent Teacher Association (PTA) Fund. Thereafter, the petitioner had worked in Government Primary School, Raison, District Karnal from 09.03.2010 to 22.08.2012 as Edusat Chowkidar against honorarium being received from the office of Block Education Officer, Nilokheri, the District Elementary Officer, Karnal, vide his communication No.A1/12/1072-77 dated 18.07.2012 had clarified that the services of the applicant would be dispensed with on the regular incumbent joining duty, that Smt. Gurdevi wife of Shri Dalip Kumar was appointed as Chowkidar by the District Education Officer, Karnal, vide letter No.E-3/12/289-370 dated 21.05.2012 and pursuant thereto, joined duty in Government Senior Secondary School, Raison, District Karnal on 07.06.2012 and since she had been appointed as regular Chowkidar and joined duty, therefore, the services of the petitioner were dispensed with as no longer required, that no assurance was given to the workman that he would be made a permanent employee of the Haryana Government etc.

[4] On the basis of the pleadings, the following issues were framed:-

- “1. *Whether the termination of services of workman Shri Om Dass is legal and valid, if not so, to what relief the workman is entitled? OPW*
2. *Relief.*”

[5] On the basis of evidence led, the Tribunal came to the conclusion that it had been proved on the record that the petitioner-workman had worked with the respondents and had completed more than 240 days of service, therefore, he was entitled to relief against the respondents but keeping in view the circumstances, the Court was of the considered view that ends of justice would be met by not ordering reinstatement with full back wages and continuity of service, instead, by holding the workman entitled to lump-sum compensation of Rs.45,000/- within three months from the date of publication of the Award, failing which, the management would be liable to pay simple interest @ 6% per annum. Learned Counsel contended that once the Tribunal held the petitioner entitled to relief, then the same ought to have been reinstatement with full back wages and continuity of service.

[6] *Per contra*, learned counsel for the respondents contended that the lump-sum compensation of Rs.45,000/- awarded by the Tribunal instead of directing reinstatement with full back wages and continuity of service did not warrant interference as he was not an employee of the respondents besides had worked for a short duration only.

[7] I have considered the submissions of learned counsel for the parties.

[8] Admittedly, the petitioner was appointed as Part Time Chowkidar by the respondents in Govt. Senior Secondary School, Raison,

District Karnal on 27.09.2008 against wages of Rs.1,000/- per month. As per evidence of MW1-Uttam Kumar, Head Teacher, who filed affidavit (Ex. MW1/A), the petitioner worked as Part Time Chowkidar from 27.09.2008 to 08.03.2010 in Govt. Senior Secondary School, Raison, District Karnal against honorarium paid to him from the Parent Teacher Association (PTA) Fund. However, thereafter, the petitioner worked in the school as Edusat Chowkidar in Government Primary School, Raison, District Karnal from 09.03.2010 to 22.08.2012 against honorarium received from the office of Block Education Officer, Nilokheri, that Smt. Gurdevi wife of Shri Dalip Kumar was appointed as Chowkidar by the District Education Officer, Karnal, vide letter No.E-3/12/289-370 dated 21.05.2012 and pursuant thereto, joined duty in Government Senior Secondary School, Raison, District Karnal on 07.06.2012 and it is thereafter the District Elementary Officer, Karnal, vide his communication No.A1/12/1072-77 dated 18.07.2012 wrote that services of the petitioner-workman would be dispensed with. The Tribunal took into account that there had been a shift in the legal position and relief by way of reinstatement with full back wages was not automatic and may be wholly inappropriate in a given situation even though termination of the employee was in contravention of the provisions of law, held that in view of the petitioner having worked with the respondents and completed more than 240 days of service in the relevant period, held that payment of compensation instead of order of reinstatement would meet the ends of justice, accordingly, ordered payment of lump-sum compensation of Rs.45,000/- within three months from the date of publication of the Award, failing which the same would be payable along with simple interest @ 6% per annum.

[9] In view of the petitioner having worked as Edusat Chowkidar in Government Primary School, Raison, District Karnal from 09.03.2010 to 22.08.2012 against honorarium received from the office of Block Education Officer, Nilokheri, besides his services having been terminated on 22.08.2012 pursuant to clarification given by the District Elementary Officer, Karnal, dated 18.07.2012 on joining of incumbent on regular basis on 07.06.2012 and services of the petitioner having been terminated without compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947, the petitioner-workman was rightly held to be entitled to relief against the respondents. The matter would have been different had a condition been incorporated in the order appointing the petitioner as Edusat Chowkidar in Government Primary School, Raison, District Karnal on 09.03.2010.

[10] However, the question which arises for consideration in the instant case is as to whether the petitioner is entitled to reinstatement or in the alternative payment of appropriate compensation in lieu of reinstatement. In view of the services of the petitioner being dispensed with on account of joining of Smt. Gurdevi regularly selected as Chowkidar, grant of relief of compensation instead of reinstatement with back wages does not warrant interference except to the extent of quantum of compensation paid. The petitioner worked as Edusat Chowkidar in Government Primary School, Raison, District Karnal against honorarium paid to him from the office of the Block Education Officer, Nilokheri i.e. for a period of approximately 02 years 05 months against monthly honorarium of Rs.1000/-. In **Bhavnagar Municipal Corporation etc versus Jadeja Govubha Chhanubha & anr- 2016(14) SCC 130**, Hon'ble the Supreme Court while holding termination of a

conductor appointed on daily wage basis in 1987 and who had rendered approximately 18 months of service, instead of ordering reinstatement with continuity of service and full back wages ordered payment of lump sum compensation of Rs.2,50,000/-. A Co-ordinate Bench of this Court in **Ram Palat versus Presiding Officer, Industrial Tribunal cum Labour Court, U.T. Chandigarh and another- 2015(2) SCT 163** enhanced the compensation granted in lieu of reinstatement from Rs. 7500 to Rs. 2,00,000/- in case of a workman who had been engaged as a Beldar on daily wage basis and served for a period of approximately 2 years. The Coordinate Bench placed reliance on the decision of Hon'ble the Supreme Court in **Bharat Sanchar Nigam Limited vs Man Singh-2012(1) SCT-641** wherein the Apex Court had granted compensation of Rs. 2,00,000/- to each of the workmen therein when they had worked on daily wage basis for a period slightly more than 240 days. The Coordinate Bench also placed reliance on the decision of a Division Bench of this Court in LPA No. 890/2014 titled as **BPS Mahila Vishwavidyalaya versus Mukesh Kumar & others decided on 01.07.2014** wherein Hon'ble the Division Bench had awarded a compensation of Rs. 3,00,000/- to a daily wage sweeper who had rendered service for a period of 1 ½ years whose termination was found to be in violation of Section 25-F of the Industrial Disputes Act, 1947. Likewise in the case of **Municipal Council Dina Nagar, Tehsil and District Gurdaspur, vs Presiding Officer, Gurdaspur and anr-LPA No. 754/2010** and other connected cases decided on 29.11.2014, Hon'ble the Division Bench of this court granted compensation of Rs. 1,00,000/- per year of service to peons and clerks whose services were terminated in violation of Section 25-F of the Industrial Disputes Act, 1947. In the aforementioned connected cases under

consideration before the Division Bench, one of the workmen therein namely Sarbjit Singh was appointed as Octroi Clerk/Maharar on 01.03.1995 and worked upto 31.03.1997 against monthly salary of Rs. 1550/- per month.

[11] In the light of the position noted above, I am of the view that ends of justice would be met if while maintaining the award of compensation in lieu of reinstatement with back wages and continuity of service, compensation of Rs.45,000/- awarded to the petitioner-workman is enhanced to Rs.2,00,000/- on account of his having served in Government Primary School, Raison, District Karnal from 09.03.2010 to 22.08.2012 i.e. 2 years and 5 months against honorarium of Rs. 1000/- per month received from the office of the Block Education Officer, Nilokheri. Accordingly, the impugned award is modified by holding the petitioner to be entitled to compensation of Rs.2,00,000/- instead of Rs.45,000/- awarded by the learned Tribunal. Payment be made to the petitioner within three months from the date of submission of certified copy of this order, failing which, the same shall be payable along with interest @ 7.5% per annum w.e.f. date of entitlement, till date of payment.

(B.S. Walia)
Judge

26.07.2019

'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No