

(1)

CWP-26870-2014 & connected case

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 28th November, 2019

CWP-26870-2014

Baljinder Singh

...Petitioner

Versus

Industrial Tribunal, Patiala & another

...Respondents

(2)

CWP-26357-2014

Didar Singh

...Petitioner

Versus

Industrial Tribunal, Patiala & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Adeshwar Singh Pannu, Advocate for
Mr. Vikas Singh, Advocate, for the petitioners.

Mr. G.S. Attariwala, Advocate
for respondent No.2 in both cases.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to dispose of CWP-26870-2014,
titled as 'Baljinder Singh Versus Industrial Tribunal, Patiala & another'
and CWP-26357-2014, titled as 'Didar Singh Versus Industrial Tribunal,
Patiala & another', where both the petitioners claiming themselves to be

employed as Pump Operators by respondent No.2 – Municipal Council, Nabha, on 01.01.2004 and 01.02.2004, were terminated from service on 29.06.2008 and 28.06.2008 respectively.

2. As per the evidence on record and admission in the cross-examination by the petitioners – workmen, they were appointed on contract basis at the rate fixed by Deputy Commissioner and they were not issued any appointment letter. The termination of the services of the petitioners were found to be violative of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D. Act') but have been denied reinstatement in service because of the fact that they do not fulfill the minimum requisite qualification for the post on which they are claiming reinstatement. Compensation amounting to ₹ 22,500/- has been granted to petitioner – Baljinder Singh and ₹ 21,700/- to petitioner – Didar Singh for having worked with respondent No.2 – Municipal Council, Nabha, for approximately 4 ½ years.

3. Learned counsel for the petitioners states that once a categorical finding has been given by the Industrial Tribunal, Patiala (for short 'the Tribunal') that Section 25-F of the I.D. Act has been violated and the petitioners having worked for 4½ years, would be entitled to reinstatement in service irrespective of the fact whether they fulfill the minimum qualifications prescribed for the post of Pump Operator or not? He contends that it is the initial stage of appointment when the qualifications are required to be seen and in any case, with the passage of

time with experience gained by the petitioners, they having become efficient in their work cannot be precluded from proceeding on the assumption that they possess the requisite qualifications for appointment to the post of Pump Operator. He, therefore, states that the impugned awards dated 08.07.2014 passed by the Tribunal cannot sustain and deserve to be set aside and reinstatement in service of the petitioners be ordered. His further contention is that in any case, the compensation which has been awarded to the petitioners is meager for the period they had worked with respondent No.2 – Municipal Council, Nabha and the said amount requires to be enhanced. He, thus, prays that this Court may order reinstatement in service of the petitioners at the first instance and if not so, enhance the compensation awarded.

4. Learned counsel for respondent No.2 – Municipal Council, Nabha, on the other hand, asserts that the awards passed by the Tribunal are justified as reinstatement in service of the petitioners could not have been ordered because of they being ineligible to the appointment for the post of Pump Operator. He contends that the appointments with the Municipal Council, Nabha, are governed by the statutory rules. The stand of the Municipal Council was and is that the petitioners were working with the private contractor, who had been appointed by the Municipal Council, Nabha to engage workforce for the job and the payments were being made to the private contractor and not to the employees employed by him. He submits that had the appointment been made by the

Municipal Council, Nabha, petitioners at the first instance could not have been appointed at all because of their ineligibility. He, however, could not come out of the findings which have been recorded by the Tribunal to the extent that provisions of Section 25-F of the I.D. Act have not been complied with especially in the light of the fact that no challenge has been posed by the Municipal Council to the impugned awards passed by the Tribunal. He, thus, contends that no interference in the awards which have been passed by the Tribunal is called for and the compensation which has been granted is proportionate to the period for which the petitioners have served respondent No.2 – Municipal Council, Nabha.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned awards.

6. It is not in dispute that the Municipal Council, Nabha, has not challenged the award impugned by the petitioners and therefore, findings as recorded by the Tribunal cannot now be disputed by the counsel. If that be so, the termination of the petitioners being violative of Section 25-F of the I.D. Act, would stand. The factum with regard to the petitioners having worked in the Municipal Council or with the private contractor would not be open for consideration especially in the light of the fact that what has been held by the Tribunal is that the relationship of master and servant existed between the petitioners and respondent No.2 – Municipal Council, Nabha. The question, therefore, now which stares on the face of

the Court is whether irrespective of the qualifications which have statutorily been laid down under the rules for the post of Pump Operator of Municipal Council could be overlooked for reinstatement of the workmen merely because the provisions of Section 25-F of the I.D. Act stand violated?

7. The answer to the above question is in the negative for the reason that the appointments, even if made by an authority, which is in violation of the statutory rules, cannot be said to be legal. Merely because of the passage of some time, the essential qualifications would not stand obliterated. Admittedly, the minimum qualifications for appointment to the post of Pump Operator in the Municipal Council is I.T.I. pass, which unfortunately, none of the petitioners possess. In the absence of the technical qualification, which is mandated for appointment to the post of Pump Operators, the Tribunal has rightly proceeded to deny the petitioners reinstatement in service.

8. However, the amount of compensation which has been granted to the petitioners, as referred to above, is inadequate and therefore, required to be interfered with. The compensation for the period of approximately 4½ years' service as granted by the Tribunal is ₹ 22,500/- and ₹ 21,700/- respectively.

9. Keeping in view the fact that the Tribunal has found violation of Section 25-F of the I.D. Act, the compensation being inadequate need to be enhanced and accordingly, the same is assessed at ₹ 15,000/- per

year and for the approximate period of 4½ years' service, the amount of compensation can be rounded of as ₹ 70,000/- to each of the petitioners. The awards of the Tribunal stand modified to the extent of enhancing the amount of compensation to ₹ 70,000/- to each of the petitioners, rest of the terms and conditions of the awards shall remain the same.

10. The consequential benefits as a result of above enhancement in compensation after adjustment of any amount, if released, in pursuance to the impugned awards, be released to the petitioners within a period of two months from the date of receipt of certified copy of this order by the Municipal Council, Nabha.

11. The writ petitions stand disposed of in above terms.

28th November, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No