

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

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Civil Writ Petition No.5398 of 2014
Date of Decision: December 4th, 2019

Jaswinder Singh

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Puran Chand Arora, Advocate
for the petitioner.

Mr. Naginder Singh Vashist, Advocate
for respondents No.2 to 4.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the award dated 02.09.2013 (Annexure P-1) passed by the Industrial Tribunal, Patiala, whereby the reference has been answered in favour of the petitioner to the extent of termination of his services being violative of Section 25F of the Industrial Disputes Act, 1947 but denying him reinstatement in service with a lump sum compensation of ₹20,000/- with interest at the rate of 6% per annum from the date of passing of the award till realization.

2. It is the contention of learned counsel for the petitioner that the Labour Court has come to a categoric and conclusive opinion and a finding is returned that the retrenchment of the petitioner-workman on 28.05.2005 by the respondents was violative of Section 25F of the Industrial Disputes Act, 1947. The natural consequences would be reinstatement in service with continuity thereof. He contends that the Labour Court having observed the said aspect could not have proceeded to deny him reinstatement with continuity of service and restrict the relief to a compensation of ₹20,000/- and that too for a period of six years of service

as the petitioner admittedly had worked with the respondents from 12.01.1999 to 28.05.2005 at monthly wages of ₹2,277/-. In support of his contention that the petitioner was entitled to reinstatement in service, reliance has been placed by the counsel for the petitioner on the judgment of the Supreme Court in *Ajaypal Singh Versus Haryana State Warehousing Corporation 2015 (6) SCC 321*, where it has been so held by the Supreme Court. He, therefore, prays that the impugned award cannot sustain and deserves to be set aside, where the relief has been restricted only to the grant of compensation instead of reinstatement in service with continuity thereof.

3. On the other hand, learned counsel for the respondents asserts that the Labour Court has rightly observed and taken into consideration the fact that the petitioner was not appointed in consonance with the statutory rules/instructions applicable for appointment to the post, on which he was performing his duties. Since his employment was not as per the required mandate as applicable for filling up the post, on which he was working, reinstatement could not have been ordered and the Tribunal has proceeded to grant the alternative relief of compensation.

4. I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the impugned award and the pleadings.

5. Facts are not in dispute that the petitioner was appointed with the respondents on 12.01.1999 and continued as such till 28.05.2005 when as per the stand of the respondents, he was retrenched from service and was paid retrenchment compensation amounting to ₹9,118/-, which was credited to his account on 18.03.2006. The factum of the petitioner having worked

continuously with the respondents for the period referred to above is not in dispute as MW-1 Rajesh Kumar Singla in his cross-examination has admitted the fact that the workman had been paid wages from 06.02.1999 to 28.05.2005. The Labour Court has held the retrenchment of the petitioner by the respondents to be violative of Section 25F of the Industrial Disputes Act for the reason that the compensation amount was paid to the workman on 18.03.2006, whereas the services were terminated on 28.05.2005. The requirement of law is that the amount of compensation has to be paid simultaneously at the time of retrenchment of an employee. The findings, therefore, as recorded by the Labour Court being in consonance with law, cannot be faulted with that it is violative of Section 25F of the Industrial Disputes Act.

6. It may be added here that the respondents have accepted the award which has been passed by the Labour Court and have chosen not to challenge the said award.

7. If that be so, the findings with regard to the termination of the services of the petitioner being violative of Section 25F of the Industrial Disputes Act, 1947, have attained finality.

8. The question, therefore, now which arises for consideration, is whether the compensation amount of ₹20,000/-, as has been granted to the petitioner, would be justified in the given facts and circumstances of the present case.

There is nothing on the record which would indicate that the work and conduct of the petitioner was ever faulted with nor is there anything indicating that there was dearth of work or the work did not exist of the post, on which he was performing his duties. The plea which has been

taken by the respondents as a ground for denying him the reinstatement in service is that his initial appointment was not as per the service rules. Merely because the respondents have taken such a plea would not be enough, especially when it has not been pointed out as to which were the statutory rules, which govern the services for appointment to the post on which the petitioner was performing his duties nor have such rules been produced before the Labour Court which would indicate the qualifications for the post, on which the appointment of the petitioner was done by the respondents. In the absence of any evidence to the contrary, the presumption is that the petitioner stood appointed on a post as he fulfilled the requisite qualifications for the same. This aspect may not, in any case, impede this Court to proceed in the matter in the light of the judgment of the Supreme Court in *Ajaypal Singh's case (supra)*, where the Hon'ble Supreme Court has held as follows:-

“XXXX XXXX XXXX
XXXX XXXX XXXX

22. Section 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under said provision if the employer retrenches workman. Such a workman cannot be retrenched until he/she is given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice apart from compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

If any part of the provisions of Section 25F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 and 16 of the Constitution of India.

23. Section 25H of the Industrial Disputes Act relates to re-employment of retrenched workmen. Retrenched workmen shall be given preference over other persons if the employee proposes to employ any person.

24. We have held that provisions of Section 25H are in conformity with the Articles 14 and 16 of the Constitution of India, though the aforesaid provisions (Articles 14 and 16) are not attracted in the matter of re-employment of retrenched workmen in a private industrial establishment and undertakings. Without giving any specific reason to that effect at the time of retrenchment, it is not open to the employer of a public industrial establishment and undertaking to take a plea that initial appointment of such workman was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a backdoor appointee.

25. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.

26. However, in other cases, when no such plea is taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of the Constitution of India or in violation of any statutory rule or his appointment was a backdoor appointment, while granting relief, the employer cannot take a plea that initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by the appropriate Government for determination of question whether the initial appointment of the workman was in violation of

Articles 14 and 16 of the Constitution of India or statutory rules. Only if such reference is made, a workman is required to lead evidence to prove that he was appointed by following procedure prescribed under the Rules and his initial appointment was legal.

27. In the present case, the services of appellant was not terminated on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. No such reasons was shown in the order of retrenchment nor was such plea raised while reference was made by appropriate Government for adjudication of the dispute between the employee and the employer. In absence of such ground, we are of the opinion that it was not open for the High Court to deny the benefit for which the appellant was entitled on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India.”

9. In the light of the above authoritative decision of the Hon'ble Supreme Court, petitioner is held entitled to reinstatement in service with continuity thereof with 50% back wages from the date of termination till the date of reinstatement keeping in view the facts and circumstances of the present case.

10. Petitioner shall report to the respondents within a period of one month from today.

11. On the petitioner having been reinstated in service with continuity thereof, the consequential benefits be released to him within a period of two months thereafter.

December 4th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes