

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 13.02.2019****CWP No.13173 of 2009**

Prem Bahadur

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Jalandhar & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Jyoti Sareen, Advocate, for the petitioner.

Mr. Sandeep Vermani, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.

1. The award passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Jalandhar dated 20.04.2009 has been challenged in this petition, whereby reinstatement has been denied and in lieu thereof wages paid to the petitioner under Section 17-B of the Industrial Disputes Act, 1947 in a sum of ₹2,19,468/- have been converted into compensation. The last drawn wages were paid to the petitioner in compliance of directions in the previous litigation i.e. CWP No.1671 of 2004 filed by the State of Punjab against the petitioner. That case was decided on 11.12.2008. The period for which last drawn wages were paid was from 02.02.2004 to 31.12.2008. The Labour Court at Jalandhar has awarded no further amount as compensation in impugned award. Amount of compensation to Prem Bahadur is said to be wholly unreasonable, unjust and inadequate. Quashing of the award by a writ of certiorari is prayed for except as to findings on

completion of 240 days during the relevant period. Reinstatement is prayed for.

2. The history of the case as found in the papers reveals that the petitioner was appointed on daily wages on 01.07.1983 and worked till 31.09.1995 with gaps. The petitioner was brought from daily wages to work-charged Beldar in the pay-scale of Rs.770-1410/- and was posted in Investigation Sub Division No.3, Hoshiarpur. The pay was chargeable to “work” undertaken in the Sub Division. The order was passed on 12.09.1997. While the petitioner was serving in that capacity, the Department received a letter from the Government of Punjab, Department of Irrigation, Chandigarh directing local administration to remit a list of officials who are working as daily wages, work-charge contingent staff on ad hoc basis for the last two years. It was directed that the services of the officials on the list be terminated. In case the order was not complied with, the defaulting officer/s would be liable to pay salary from their own pocket. The background in which order was made on 19.04.1999 was described due to violation of Government policy regarding ban on recruitment at the relevant time.

3. As a result, the services of the petitioner were terminated vide order dated 27.04.1999. This led to the dispute in the first reference of 2000. The Labour Court, Jalandhar held that termination of services of the workman was illegal and occasioned as a result of unfair labour practice on the part of the management and as such the court awarded reinstatement with 40% back wages with continuity of service and all other service benefits. This award was challenged by the respondent-State of Punjab by way of CWP No.1671 of 2004 mentioned supra.

4. Learned Single Judge referred to the following observations of the Labour Court and found that there was no clarity in the award as to in which calendar year, the workman had worked for 240 days:

“...the workman had worked for four months less than two year. It is to be noted that if his services from 01.04.1995 till 30.09.1995 is included, which is after the major break of 212 days on daily wage basis, the period of the services of the workman becomes more than two years.”

5. This Court found that on the aspect of 240 days, the award was vague and the issue could be decided effectively, completely and finally on the stated aspect only. The word “only” in the judgment is significant in the understanding of what the Labour Court would be tasked to do in the remand proceedings. However, as far as the termination order is concerned, the matter rested there.

6. The only finding that the Labour Court should have returned on the question of completion of 240 days of service in the 12 calendar months previous to the termination order was whether the test in Section 25-B read with Section 25-F of the Industrial Disputes Act, 1947 was satisfied or not as a matter of fact on the evidence. This was required to remove doubts in the previous award. The direction of the High Court was to decide the limited issue afresh by taking into consideration the details of the period given by the petitioner in the petition as well as on the strength of law cited on his behalf. The remand proceeding by a fresh award was directed to be disposed of preferably within three months from the date of receipt of certified copy of the judgment.

7. On remand, the Labour Court in the impugned fresh award dated 20.04.2009 has held that the workman admittedly rendered service for a period of more than 240 days in the calendar year immediately prior to his

termination on 26.05.1999; also held that despite issuance of letter dated 19.04.1999 by the Government commanding termination of services of temporary staff, the department was duty bound to follow the mandatory provisions of Section 25-F of the Act. The Labour Court further held that the termination of the services of the workman were simply based on the letter of the Government and not on any grounds available to the employer under the ID Act for retrenchment of the workman. Thus, the retrenchment of the workman is in violation of mandatory provisions of Section 25-F of the Act. This was a conclusion already arrived at in the previous award and was not necessary to be gone into again in view of the specific remand directions. If 240 days were never worked, *a priori*, the provisions of Section 25-F of the Act are not applicable.

8. It is argued by Ms. Sarin that the Labour Court has travelled beyond the remand directions when the previous award was set aside by an order of remand. There was a specific direction that only the issue of completion of 240 days was to be gone into and none other. The word “only” in the judgment and order indicates this admitting of no doubt. Even the scope of the order dated 11.12.2008 was restricted and limited to re-examination of the jurisdictional issue of completion of 240 days obviously within the meaning of Section 25-B of the Act. The previous award granted reinstatement with the finding of unfair labour practice and for violation of Section 25-F of the Act. Rights flowing from that award granting reinstatement with 40% back wages could not be abrogated by the Labour Court, as the writ continued to run as it was not arrested by this Court while remitting the matter back to the tribunal was only for it to bring clarity on the point of proof of days spent continuously working prior to the date of

termination, to find as a fact if that test was satisfied. The Labour Court having brought clarity on this aspect on the basis of evidence by recording a finding of fact that 240 days were completed, it should have left the matter at that and dittoed the relief already granted by his predecessor court. But it could not re-mould the relief and deprive the petitioner of reinstatement and 40% back wages awarded in the judicial discretion of the earlier Labour Court. Clubbing of service from 01.04.1995 to 30.09.1995 with the later service from 14.09.1997 to 06.05.1999 was not material to the determination from the point of view of Section 25-F(a) & (b) and Section 25-B which provides the formula of deemed service of a year to be 240 days.

9. It is argued that the Labour Court has been needlessly swayed by the fact that it was dealing with a case of public employment and the appointment of the workman was not in accordance with rules nor there is any evidence to show that the post was advertised or that requisition was sent to the employment exchange. The Labour Court in the impugned award has observed that in such an eventuality the service of the employee cannot be regularized by reinstating him by applying the ratio in Mahboob Deepak Vs. Nagar Panchayat Gujraula & another, 2008 (1) SCT 310; M.P.State Agro Industries Development Corporation Ltd. & another Vs. S.C.Pandey, (2006) 2 SCC (L&S) 434; and, District Manager, Haryana Agro Industries Corporation Ltd. Kaithal & another Vs. Workman Bhira Ram & another, 2008 (3) SCT 711. At none of the three stages of litigation did the petitioner claim regularization. He had only challenged his illegal termination. These observations run counter to the office order dated 12.09.1997 bringing the petitioner from daily wage to work-charged Beldar in a running pay scale. After all, daily wage service followed by work-charged service is a valuable

right and total service would be reckonable for pension in case permanence is granted to the employment.

10. Ms. Sarin would refer to the law in Anoop Sharma Vs. Executive engineer Public Health Division No.1, Panipat (Haryana), (2010) 3 SCC 497, a judgment rendered after the impugned award was passed in 2009. The Supreme Court held in the case that non-compliance of the provisions of Section 25-F(a) & (b) of the Act is fatal to termination and renders retrenchment of an employee a nullity. The petitioner is entitled to continue employment as his services were not terminated. This finding has been returned by the Labour Court in the previous award.

11. In Vikramaditya Pandey Vs. Industrial Tribunal, (2001) 2 SCC 423, the Supreme Court held that once termination of a workman is found to be illegal, the normal rule is to grant reinstatement with full back wages. However, it is open to the employer to specifically plead and establish that there were special circumstances which warrant non-grant of such a relief. The Supreme Court further observed that industrial law prevails over regulations to the extent of inconsistency between the two.

12. It was not even the pleaded case of the Department that the appointment of the petitioner was not as per recruitment rules and accordingly the Labour Court fell in error in isolating the case of the petitioner on the touchstone of public employment and dubbing the petitioner of what is called a back-door entry. But for the letter of the Government dated 19.04.1999, the petitioner would have continued in service and perhaps obtained regularization by now in view of government policies intervening. The State has not called in question the fresh award by filing a petition.

13. Even assuming *arguendo* that compensation in lieu of reinstatement was the appropriate relief, even then the impugned award suffers from error in restricting compensation to the amount paid under Section 17-B of the Act. The Labour Court overlooked the fact that his predecessor has awarded reinstatement with 40% back wages and has at the same time misconstrued the remand directions as plenary. The Labour Court exceeded its jurisdiction acting beyond the remand directions which is impermissible.

14. The Labour Court was tasked only to bring clarity on whether the petitioner had completed 240 days of continuous service in the 12 calendar months preceding the date of termination. The impugned award has to be read restricted to that finding. That the jurisdictional issue of 240 days went in favour of the workman and against the management is a finding of fact which is not to be disturbed when recorded after appreciating the evidence. The remand directions have served their purpose and justice has been served to that extent in the fresh award.

15. As a result of the above discussion, I find substance in the arguments advanced on behalf of the petitioner that relief re-moulded by the tribunal is not tenable, while at the same time no meaningful defence arguments was raised by the State Government. Accordingly, the writ petition is allowed. The impugned award dated 20.04.2009 is upheld on the finding of completion of 240 days but the remaining part is set aside, holding that the relief granted in the previous award dated 16.12.2003 is maintained as just and equitable.

16. It is further directed that the amount paid under Section 17-B of the ID Act during the writ proceedings which has been reckoned as

compensation in lieu of reinstatement were for a different statutory purpose and will not be counted towards 40% back wages.

17. Judgment reserved on 23.01.2019 is pronounced today.

13.02.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>