

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

**CWP No.13532 of 2021(O&M)  
Date of Order:28.07.2021**

**Surinder**

**..Petitioner**

**Versus**

**Presiding Officer and others**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

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

**ANIL KSHETARPAL, J(Oral)**

The hearing of the case was held through video conference on account of restricted functioning of the Courts.

Through this petition, filed on 20.08.2020, under Article 226/227 of the Constitution of India, the petitioner assails the correctness of the order dated 4.10.2019 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, whereby he has been granted compensation of Rs.1,00,000/- in lieu of reinstatement.

The petitioner sought reference claiming that he has worked on daily wages with respondent no.2 and 3 from April 2010 to December 2013 as a Watchman and his services have been dispensed with without following the prescribed procedure. He also claims that various workmen junior to him are still working, whereas the petitioner's services have been dispensed with.

Respondent no.2 and 3 contested the petition on the ground that the petitioner was initially engaged by Lokesh Security and Detective

Agency which is an outsource provider and thereafter, he worked under the respondents for some time. From April, 2012, the petitioner worked under respondent no.4-Oscar Security and Fire Service (a licenced out-sourcing agency). Hence, it was claimed that the petitioner has not worked under the respondents during the last more than 12 calendar months.

On the other hand, respondent no.4 contested the petition and took a plea that the petitioner worked upto 15.01.2014, but thereafter, he absented himself and therefore, the petitioner is not entitled to the benefit.

The Tribunal, after appreciating the evidence, has found that there is no evidence that the petitioner served under the Lokesh Security and Detective Agency. Thus, the Tribunal has found that from April 2010 till October 2011, except in the month of July, 2011, the petitioner worked under respondent no.2 and 3. Thereafter, an out source agency, namely, M/s Oscar Security and Fire Service was engaged to provide the man power. The petitioner worked under the agency from 05.04.2012 to 15.01.2014. The court found that provisions of Section 25(f) of the Industrial Dispute Act, 1947, have not been complied with and therefore, the petitioner is entitled to compensation in lieu of reinstatement to the extent of Rs.1,00,000/- from respondent no.4.

This Bench has heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

The learned counsel representing the petitioner while relying upon the judgment passed in CWP No.25418 of 2013 (**Haryana Agro Industries Corporation Ltd. and another vs. Surender Singh and another**) decided on 20.11.2013, CWP No.12463 of 2000 (**State of Punjab and another vs. Presiding Officer, Labour Court, Jalandhar and another**)

decided on 26.08.2015 and CWP No.18048 of 2000 (*State of Punjab and another vs. Bodh Raj and another*) decided on 02.07.2014, contends that the petitioner was entitled to be reinstated in service with full back wages and therefore, the Tribunal has erred in awarding the compensation of Rs.1,00,000/-.

This Bench has considered the submissions, however, finds no merit therein. There is no finding of fact that the petitioner remained in the employment of respondent no.4 from April, 2010 to December, 2013. There is also no evidence that the petitioner was in service from 01.11.2011 to 31.03.2012. It is also not in dispute that respondent no.4 is a service provider. He engages workmen whenever there is a demand for supply of manpower. Thus, there is no regularity in the work available with respondent no.4. Still further, the Tribunal after appreciating the evidence has exercised discretion which is not proved to be perverse.

The learned counsel while relying upon the judgment, referred to above, contends that reinstatement is a Rule, whereas award of compensation is an exception. He, hence, contends that the Tribunal erred in refusing to reinstate the petitioner. It may be noted here that recently the Supreme Court in *Rashtrasant Tukdoji Maharaj Technical Education Sanstha vs. Prashant Manikrao Kubitkar, (2018) 12 SCC 294* has held that grant of compensation in lieu of the reinstatement is a Rule, whereas reinstatement is an exception. Still further, the Hon'ble Supreme Court in a long series of judgment has consistently laid down that in the facts and circumstances of the case, the Tribunal is within its jurisdiction to order payment of the compensation in lieu of reinstatement. Reliance in this regard can be placed on the following judgments:-

- (1) *Bharat Sanchar Nigam Ltd. vs. Man Singh, (2012) 1 SCC 558*
- (2) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota vs. Mohan Lal (2013) 5 SCC 136.*
- (3). *Ashok Kumar & Ors. Vs. M/s Hindustan Vegetable Oil Co. (2008) 1 SCC 575.*
- (4) *Incharge Officer and another vs. Shankar Shetty, (2009) 15 SCC 327*
- (5) *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors. (2010) 6 SCC 773.*
- (6). *State of Madhya Pradesh vs. Vinod Kumar Tiwari, (2016) 16 SCC, 610.*
- (7) *District Development Officer . vs Satish Kantilal Amrelia (2018) 12 SCC 298.*
- (8) *Management, Hindustan Machine Tools vs. Ghanshyam Sharma, (2018) 18 SCC 80*

Keeping in view the aforesaid facts, this Bench does not find it appropriate to interfere in the discretion exercised by the Tribunal.

Hence, dismissed.

28<sup>th</sup> July, 2021  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned  
Whether reportable

: Yes/No  
: Yes/No