

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

CWP-693-1996

Director, State Transport, Punjab and another Petitioners

Versus

Gurcharan Singh and another Respondents

CWP-695-1996

General Manager, Punjab Roadways Petitioner

Versus

Atma Singh and another Respondents

Date of Decision: 04.08.2022

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Harsimrat Rai, Deputy Advocate General, Punjab,
for the petitioner.

Mr. Prateek Mahajan, Advocate, and
Mr. Ashish Gupta, Advocate,
for respondent No.1 (in CWP-693-1996).

None for respondent No.1 (in CWP-695-1996)

RAJBIR SEHRAWAT, J. (ORAL)

This shall dispose of two petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the impugned award dated 02.03.1994 (in CWP-693-1996) and impugned award dated 02.11.1994 (in CWP-695-1996) passed by respondent No.2, because the common preposition of entitlement to the back wages is involved in these cases. In both these cases, undisputedly, the respondents-workmen

were reinstated/re-employed by the petitioner-department. However, for the sake of brevity, the facts are being taken from CWP-693-1996.

The brief facts, as involved in the present case, are that the respondent-workman asserted that he had worked for over four years with the petitioner-department from 13.09.1993 till 06.11.1987. On this date, the services of the respondent-workman were terminated without any notice and without payment of retrenchment compensation. Junior to the respondent-workman was retained in service. Hence, the termination of the respondent-workman was wrong. Asserting these facts, the respondent-workman had raised an industrial dispute. The said dispute was referred to the Labour Court. The Labour Court answered the reference in favour of the respondent-workman and granted relief of back wages for the period the workman remained out of job. It is against the said award that the present petition has been filed by the petitioner-department.

Arguing the case, learned counsel for the petitioner has submitted that the services of the respondent-workman were discontinued being junior most; and there being no vacancy against which he could have been continued. However, when the vacancy arose, the respondent-workman was again employed w.e.f 20.12.1991. Hence, there was no lapse or illegality on the part of the petitioner-department. There is nothing on record to show that the petitioner had violated any provision of the Industrial Disputes Act. Hence, the Labour Court has wrongly passed the impugned order granting the back wages for the period from 07.11.1987 to 19.12.1991.

The respondent-workman could not be continued only because of non-availability of the work. There is nothing proved on record to show that any person junior to the respondent-workman was retained. As and when the vacancy had come, he was re-employed. Therefore, there is no question of the petitioner-department being put under the liability of paying back wages for the period for which the respondent-workman had not actually worked. The Labour Court has wrongly held the retrenchment of the respondent-workman as illegal.

On the other hand, learned counsel for the respondent-workman has submitted that the Labour Court had proceeded on the undisputed fact that the respondent-workman had completed 240 days of service at the time of termination of service and, therefore, the petitioner-department was under the legal liability to pay the retrenchment compensation, in case the services of the respondent-workman were to be dispensed with. Therefore, the Labour Court would have passed an order of reinstatement; had the petitioner-department not already re-employed the respondent-workman, in the meantime. Learned counsel has further submitted that since the respondent-workman had to remain out of service on account of illegal act of the petitioner-department, therefore, the respondent-workman has rightly been granted the back wages.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the petitioner-department. No doubt, since it is not even in dispute that the

respondent-workman had completed 240 days at the time of discontinuation of his services in the earlier instance, therefore, the petitioner-department would have been required to pay the retrenchment compensation to the respondent-workman if the petitioner-department was to discontinue with the services of the respondent-workman. To that extent, Labour Court is right in recording the finding that the petitioner-department had not followed the legal procedure at the time of discontinuing the services of the respondent-workman. However, the consequences of the non-compliance of the provision of the Industrial Disputes Act qua non-payment of the retrenchment compensation would not, necessarily, lead to reinstatement or payment of the back wages. It would be in the discretion of the Labour Court to grant the relief of reinstatement with back wages or without back wages or the monetary compensation alone. A workman cannot claim it as a matter of regret. In the present case, it was shown before the Labour Court itself that the petitioner-department had re-employed the respondent-workman on its own; on the vacancy being available with it. Hence, it is obvious that the services of the respondent-workman were discontinued by the petitioner-department only out of compulsion of non-availability of vacancy with it. In that situation, it would not be in the fitness of the things to award back wages to the respondent-workman even for the period for which he has not actually worked. Therefore, the award passed by the Labour Court deserves to be modified by setting aside the relief qua grant of back wages to the respondent-workman. However, the respondent-workman

would be entitled to all other benefits conferred upon him or consequent upon the award passed by the Labour Court.

In view of the above, these writ petitions are partly allowed by modifying the impugned awards passed by the Labour Court to the extent mentioned above.

(RAJBIR SEHRAWAT)
JUDGE

04.08.2022
adhikari

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