

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

203A

CWP No.12712 of 2002 (O&M)
DATE OF DECISION : 25th MAY, 2022

Harish Kumar

.... Petitioner

Versus

**Bhakra Beas Management Board, through its Chairman BBMB
Building, Sector-19, Chandigarh & Ors.**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Rajesh Goyal, Advocate for
Mr. Pritam Saini, Advocate for the petitioner.

Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate and
Ms. Vibhu Aggarwal, Advocate for the respondents-BBMB.

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RAJBIR SEHRAWAT, J. (Oral)

The petitioner has filed this petition under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari quashing the award dated 03.01.2002 passed by Industrial Tribunal-cum-Labour Court, Chandigarh (Annexure P-20); whereby the reference has been answered against the petitioner; and for issuance of writ in the nature of mandamus directing respondents No.1 & 2 to reinstate the petitioner with full back wages; along with certain other prayers.

The facts, as pleaded in the petition, are that the petitioner workman asserted that he was employed by the respondent-employer as work-charge T. Mate on 17.10.1984 and his service was terminated on 25.07.1985. At the time of termination of service the petitioner was not offered any retrenchment compensation. Hence, the termination of

service of the petitioner was in violation of Section 25-F of the **Industrial Disputes Act, 1947** (in short, the I.D. Act). The petitioner raised a demand notice. However, the respondents did not accept the demand. The conciliation proceedings between the parties having failed, the appropriate Government made a reference to the Labour Court. However, the Labour Court has answered the reference against the petitioner-workman. Hence, the present petition.

Carrying forward the arguments the learned counsel for the petitioner has submitted that the Labour Court has gone wrong in law in answering the reference against the petitioner on the ground that the termination of service of the petitioner was covered within the scope of provisions contained in **Section 2(oo)(BB) of the I.D. Act**. The petitioner was never appointed on contract basis, rather, he was working in work-charge establishment and was appointed at new 66KV Sub-Station, Sector 52, Chandigarh. Mere fact that the terms of appointment, enumerated by the respondent-management, that the service of the petitioner could be terminated at any point of time, without even notice, is not sufficient to bypass the provisions of the I.D. Act. The counsel has further submitted that it is not even in dispute that the petitioner had completed service of 240 days in preceding twelve calendar months immediately before the date of his termination. Hence, the action of the respondents is totally illegal. The award deserves to be set aside. The petitioner deserves to be reinstated in to the service with full back wages.

On the other hand, the counsel for the respondent-employer has submitted that the Labour Court has rightly decided the reference against the petitioner by treating the same to be covered by provision of **2(oo)(BB) of the I.D. Act**. The appointment of the petitioner was

contractual in nature and meant for a specific project. Since the work, for which the petitioner was engaged, was over, therefore, the petitioner was given notice for termination of his service. Even the retrenchment compensation was offered to him. However, he refused to accept the same. Therefore, no fault could be found with the action of the respondent-employer. The writ petition deserves to be dismissed.

Having heard the counsel for the parties and having perused the record, this court finds substance in the argument raised by counsel for the petitioner. It is not even in dispute that the petitioner was appointed on 'work-charge' basis and in work-charge establishment and was posted at Capacitor Bank at Dhulkot. Therefore, the appointment of the petitioner was not on 'contract' basis. Not only that the letter of appointment does not even talk of any contract of appointment, as such. Although, the terms of appointment stipulated that the service of the petitioner could be dispensed with at any point of time, particularly on completion of the work, however, that does not absolve the respondent-employer from compliance with the statutory provisions as contained in **Section 25 of the I.D. Act**. As an employer the respondent always had a right to dispense with the service of the petitioner-workman, however, that discretion of the respondent-employer has to be subject to the provisions as contained in the I.D. Act. A term included in the terms of appointment, *per se*, can not operate as an estoppel against the provisions of the I.D. Act. Since the appointment of the petitioner is neither expressly stated to be contractual, nor the same is in the nature of contractual appointment, therefore, the Labour Court has gone wrong in holding the termination of the service of the petitioner to be within the scope of **Section 2(oo) (BB) the I.D. Act**. Needless to say that work-

charge establishment is a different establishment, chargeable under separate head of expenditure under the **Punjab Civil Service Rules**. As compared to the contractual appointment, the work-charge service is also having other attributes, including the receipt of salary in pay scale with all the consequential increments as per the duration, and also counting of the same for the purpose of pension if such an employee is regularized on the post in continuation of work-charge appointment. Therefore, by any means, the service on the work-charge establishment cannot be compared with contractual appointment. Any condition, giving authority to the employer to terminate the service of the work-charge employee, has to be read as subject to the provisions of the I.D. Act. Therefore, the respondent-employer was under duty to follow the said provisions before retrenchment of an employee. Although, the counsel for the respondent-employer has argued that in compliance of the provisions of the I.D. Act the retrenchment compensation was offered to the petitioner, but he had refused to accept the same. However, the said aspect has not been substantiated on record before the Labour Court. No documentary evidence has been led on file to establish the fact that the respondent-employer had ever offered the retrenchment compensation and that the petitioner-workman had declined to accept the same. Hence, the action of the respondents, in terminating the service of the petitioner, is found to be in violation of the provisions of the I.D. Act.

Although the prayer of the petitioner is that the petitioner deserves to be reinstated in service with back-wages; because even the employee junior to the petitioner has been reinstated through the award passed by the Labour Court in similar situation, however, this court finds it not appropriate to grant the said prayer of the petitioner. The recent

trend in the resolution of the industrial disputes is not the reinstatement; except in case where the workman was appointed against the regular cadre post after following due procedure, rather, the trend is to award compensation. Moreover, the petitioner has already neared the age of superannuation; therefore, it is not appropriate to order reinstatement of the petitioner. Rather, it would be appropriate if the petitioner is awarded compensation in lieu of reinstatement.

On the point of retrenchment compensation, the Hon'ble Supreme Court in the case of ***Bharat Sanchar Nigam Limited v. Bhurumal, SLP (C) No.14572 of 2012 decided on 11.12.2013***, has emphasized the parameters for award of compensation. In the said judgment, for a service of 240 days, compensation of ₹2,00,000/- (rupees two lacs) was awarded by the Supreme Court. Following the essence of the said judgment it can be very well held that the petitioner is also entitled to a compensation of ₹2,00,000/- (rupees two lacs) for full and final settlement of his claim against the respondent-employer.

In view of the above, the award passed by the Labour Court is reversed. The action of the respondent-employer in terminating the service of the petitioner, without compensation, is held to be illegal. The petitioner is awarded a compensation of ₹2,00,000/- (rupees two lacs), as full and final settlement of his claim against the respondent-employer.

The respondents No.1 and 2-employer are further directed to make the payment of the aforesaid amount to the petitioner within a period of six weeks from the date of receipt of copy of this order.

The petition stands disposed of accordingly.

25th MAY, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

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