

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

CWP-19710-2016
Date of Decision: 26.05.2022

Ashok Kumar

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Samrat Malik, Advocate,
for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana,
for the respondents.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the award dated 06.04.2016 (Annexure P-1) passed by respondent No.1, to the extent that the petitioner-workman was not reinstated with continuity of service and back wages; as also seeking issuance of a writ of mandamus to reinstate the petitioner with continuity of service and full back wages.

The case, as asserted by the petitioner-workman and as argued by the learned counsel for the petitioner, is that the petitioner-workman was appointed with the respondent-employer with effect from 25.07.2011. However, his service was terminated by the respondent-employer on 01.09.2013. The petitioner-workman had completed more than 240 days of service in 12 calendar months preceding the date of termination of his service. Rather, he had completed his service of 02 years and 02 months in

total. Despite that, while terminating the service of the petitioner-workman, the respondent-employer had not complied with the provisions as contained under Section 25-F of the Industrial Disputes Act. Neither notice was issued to the petitioner-workman nor any retrenchment compensation was paid to him. The petitioner-workman had raised the industrial dispute. Since, the conciliation proceedings qua the same had failed, the reference was made by the appropriate Government to the Labour Court. That reference has been answered partly in favour of the petitioner-workman to the effect that the petitioner-workman would be entitled to compensation in lieu of the reinstatement with full back wages. It is against the said award that the present petition has been filed by the petitioner-workman; with a prayer that the petitioner-workman be granted the benefit of reinstatement with full back wages.

Learned counsel for the petitioner-workman has submitted that since the finding has been recorded by the Labour Court that the petitioner-workman was directly appointed by the SDO of the respondent-employer, therefore, the petitioner-workman has to be taken as having been appointed against a regular post of driver. Therefore, the relief of only compensation is not justified. Since, the petitioner-workman was working against the regular post, therefore, he deserves to be reinstated into service along with full back wages. Learned counsel has further submitted that even after termination of the service of the petitioner-workman, some other persons were employed by the respondent-employer on the post of driver. Hence, there is no justification for denying the relief of reinstatement to the petitioner-

workman.

On the other hand, learned counsel for the respondent-employer has submitted that the petitioner-workman was never directly appointed by the respondent-employer. Rather, he was supplied as a worker by a contractor through outsourcing policy. He has further submitted that the petitioner-workman was never engaged by the respondent-employer for performing duties of a regular post. Therefore, the award itself is wrongly passed in favour of the petitioner-workman. Even if the petitioner-workman is taken to be an employee of the respondent-department, still the relief of reinstatement with back wages is not justified in view of the fact that the petitioner-workman was not engaged against any regular post or by following any appropriate procedure. Qua the other persons working on the said post, learned counsel for the respondents has submitted that there were two posts in the concerned office and both of those posts are currently manned by the persons regularly selected through the duly constituted Selection Committee. As on today, there is no post of driver available with the respondent-employer in its office. Accordingly, it is submitted that the present petition be dismissed.

Having heard learned counsel for the parties, this Court finds substance in the argument of the learned counsel for the petitioner. So far as the objection of the learned counsel for the respondents that the petitioner-workman was not directly employed by the respondent-employer, is concerned, the same cannot be entertained by this Court, at this stage. The finding in favour of the petitioner-workman in that regard has already been

recorded by the Labour Court. The respondent-department has not even challenged the said finding by filing any writ petition. Therefore, the Labour Court has rightly held the petitioner-workman to have been directly engaged by the respondent-department.

So far as the relief granted to the petitioner-workman is concerned, this Court finds substance in the argument of the learned counsel for the respondents that there is no post available for the petitioner-workman to be reinstated on, as of now. Since there is no post available for reinstating the petitioner-workman, therefore, it would not be justified to pass any order qua the reinstatement of the petitioner-workman and the consequential back wages. But merely the fact that the reinstatement of the petitioner cannot be ordered; may not be sufficient ground to deny the appropriate amount of compensation to the petitioner-workman. The same deserves to be enhanced as per the standards adopted by the Hon'ble Supreme Court in a judgment rendered in **Civil Appeal No.10957 of 2013** titled as '**B.S.N.L. Vs. Bhurumal**' decided on 11.12.2013. Keeping in view the totality of the circumstances and the essence of the judgment of the Hon'ble Supreme Court passed in Bhurumal's case (supra), this Court finds it appropriate to grant a compensation of Rs.3,00,000/- to the petitioner-workman, in lieu of full and final settlement of the claim of the petitioner-workman against the respondent-employer. Ordered accordingly.

In view of the above, this petition is disposed of and the award passed by the Labour Court is modified to the extent mentioned above.

The respondent-employer is directed to make the payment of

the aforesaid amount of Rs.3,00,000/- to the petitioner-workman, within a period of four weeks from today.

(RAJBIR SEHRAWAT)
JUDGE

26.05.2022
adhikari

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