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

**CWP-24905-2016
Date of Decision: 25.03.2022**

Gurnam Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Randeep Singh Rana, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Charanjeet Sharma, Advocate,
for respondents No.3 and 4.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed with a prayer that the service which the petitioner had rendered, w.e.f. 04.12.1985 to 31.03.1994, be taken as a qualifying service for computing the pensionary benefits of the petitioner.

The fact as mentioned in the petition is that the petitioner was initially appointed as a fireman with the respondent-Municipal Committee, Khanna, on 04.12.1985. Thereafter keeping in view the objection raised by the Department of Local Bodies, services of the petitioner were terminated on 07.07.1987, which action was challenged by the petitioner before the

Labour Court. The Labour Court decided the claim of the petitioner vide award dated 21.04.1992 and held the termination of petitioner's services to be bad. The operative part of the said award dated 21.04.1992 passed by the Labour Court is as under:-

“ - x - x -

Issue No.4 (Relief)

7. *Coming to the question of relief, since it has been found that the termination of the services of the workman was void-ab initio being in contravention of the provisions of Section 25-F of the Industrial Disputes Act, he is entitled to reinstatement with full back wages. However, the workman, in the course of cross-examination, gave up his claim for back wages. As such, the workman is reinstated without back wages. He shall report for duty within 15 days of the enforcement of this award. No order as to costs.”*

A bare perusal of the above would show that the finding has been given by the Labour Court that the termination of services of the petitioner was *void-ab initio*, meaning thereby that the same cannot be taken into consideration for any purposes, and the wordings used in the relief is that the petitioner is to be reinstated, and the back wages were given up by the petitioner himself, meaning thereby that keeping in view the order dated 21.04.1992 passed by the Labour Court, the petitioner is to be treated in service for all intents and purposes starting from the date when he was appointed in the year 1985.

That after the reinstatement, the petitioner worked continuously and ultimately retired upon attaining the age of superannuation on 31.05.2016. The respondents, while computing the pensionary benefits of

the petitioner only gave the benefits of the service which the petitioner served after being reinstated on 31.03.1994 as a qualifying service and the service which the petitioner had rendered prior to the said date has not been taken into account as a qualifying service on the ground that there is no continuity of service granted by the Labour Court while reinstating the petitioner. This action of the respondents is under challenge in the present petition with a prayer that the respondents be directed to grant the petitioner the benefit of services from 04.12.1985 to 31.03.1994 as a qualifying service and re-compute the pensionary benefits of the petitioner and release the same along with the interest on the delayed payments.

After notice of motion, reply has been filed on behalf of the respondents, wherein they have stated that though the petitioner was reinstated in service on the basis of the award dated 21.04.1992, passed by the Labour Court, but as the wordings 'continuity of service' has not been mentioned in the relief clause, therefore, the service rendered by the petitioner prior to his reinstatement cannot be taken as a qualifying service.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position that the petitioner was appointed as a fireman on 04.12.1985 and his services were terminated by the respondents on 07.07.1987. A bare perusal of the award dated 21.04.1992, passed by the Labour Court, would show that the said termination of services of the petitioner was held *void-ab initio*, meaning thereby that the same is to be treated as non-existent for all intents and purposes. Once that order has already attained the finality, the petitioner has to be treated in service for all

intents and purposes, even for the period when he remained out of the service. Furthermore, the language used by the Labour Court in its award dated 21.04.1992 is that the petitioner is entitled for reinstatement in service with all the back wages, which shows that the Labour Court intended to give the back wages to the petitioner for the period when he remained out of the service as well, but it was only the petitioner, who surrendered the back wages voluntarily. That being so, the relief granted by the Labour Court was reinstated with all consequential benefits, meaning thereby that the period for which the petitioner remained out of service, is to be treated as a duty period for computing his pensionary benefits.

Further, in case the petitioner is denied the benefit of the service, for which he remained out, it will be putting premium upon the action of the respondents. Once the action of the respondents of terminating the services of the petitioner was found to be *void-ab initio* by the Labour Court, the respondents cannot be allowed to say that the petitioner has to suffer prejudice for the period for which he remained out of service due to the respondents' illegal action. Once the petitioner has successfully demonstrated before the competent Court of law that the order of termination of his services was bad in the eyes of law, keeping in view the wordings used by the Labour Court in the Relief Clause of its award dated 21.04.1992, the petitioner is entitled for being treated in service from 04.12.1985 till the reinstatement of his services, i.e. on 31.03.1994, for computing the qualifying service for ascertaining his pensionary benefits.

Keeping in view the above, the prayer of the petitioner is allowed and the respondents are directed to recalculate the pensionary

benefits of the petitioner by treating the service rendered by him from 04.12.1985 till 31.03.1994 as a qualifying service and extend the benefits of the same within a period of two months from the date of receipt of the copy of this order.

Allowed in the above terms.

25.03.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No