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

LPA-1554-2024 (O&M)
Date of decision: 10.07.2024

Union of India ...Appellant

Versus

Hardeep Singh and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Puneet Gupta, Sr. Panel Counsel,
Advocate for the appellant-UOI.

G.S. SANDHAWALIA, J. (ORAL)

1. Challenge in the present Letters Patent Appeal is to the order passed by the learned Single Judge dated 30.04.2024, whereby the writ petition filed by the appellant-employer was dismissed upholding the award of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.
2. While dismissing the writ petition and confirming reinstatement which was with 50% back wages as per the award, learned Single Judge has also observed that the workman was entitled for the payment of wages under Section 17-B of the Industrial Disputes Act, 1947 (hereinafter to be referred as “the Act”) in addition to relief granted to him, if not already paid, since, it was noticed that vide order dated 13.09.2022 the operation of the impugned award had been stayed subject to the provisions of the said Section. The viability of filing the present appeal has also to be considered in the above background. Section 17-B of the Act provides that where Tribunal directs the reinstatement of any workman and the employer prefers any proceedings against the said



award, the employer shall be liable to pay the said workman during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of maintenance allowance admissible to him. Apparently, the said amount is liable to be paid with full back wages and reinstatement at 50%. The viability as such of litigation even if the award is to be set aside, the appellant still has to pay the wages as prescribed under Section 17-B of the Act, without any getting work from the employer.

3. Coming to the merits of the case as such, the reinstatement is on the ground that Section 25-G of the Act has been violated and the principle as such of “last come first go” had not been adhered to. It is noticed that the appointment was on the provisional basis with immediate effect against vacant post. Gradation list reveals that out of total 471 posts, 442 persons are mentioned by names, while Sr. Nos.443 to 447 are mentioned as vacant posts. The petitioner/respondent would be at seniority No.389 and there were juniors from 390 onwards to Sr. No.447 and were retained in services in such circumstances, learned Single Judge was deemed to be of the opinion that the award of the Labour Court is not liable to be interfered with. The offer of appointment as such also mentions the factum of the vacant post and the appointment on provisional basis. The reinstatement is but natural on the same terms and conditions and that the argument raised that the employee would retain benefits as such over and above the same is not liable to be accepted. The Tribunal has not directed any regularisation of the services. Apparently, the period of service was from 2009 to 2013 which is admitted itself even by the appellant.

4. A perusal of the reasons recorded while issuing show cause notice for dispensing with the services were as per the documents on record, the



arrangement was to be made from regular appointment and the appointment as such was made without adopting the recruitment process and was on adhoc arrangement and the workman had been appointed as a substitute. Even if that was so, the statutory provision as such has to be fulfilled. Having completed 240 days, the services could not be dispensed with without giving any retrenchment compensation. This is one aspect. Secondly, the factum remains that similarly situated persons apparently as noticed by the learned Single Judge and the Tribunal were junior and were retained who were also appointed on the same arrangement. Therefore, services not being dispensed with of the persons at tail end led to the entitlement as such of the workman to be reinstated in view of the protection granted under the Act. In such circumstances in the absence of any financial losses to the appellant, since, apparently they have to pay wages under Section 17-B of the Act as already directed vide the interim order and was never challenged. Thus, we do not see the tangible reasons to interfere with the order of learned Single Judge and the award passed by the Labour Court in the absence of any infirmity.

4. Resultantly, we dismiss the present Letters Patent Appeal in limine.

5. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS BAHL)
JUDGE

10.07.2024
Pawan

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No