

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

CWP-18895-1997 (O&M)

Date of decision: 03.11.2025

Jarnail Singh

....Petitioner

Versus

Presiding Officer, Labour Court, Ludhiana, and another

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sharwan Sehgal, Advocate,
for the petitioner.

Mr. T.S. Sidhu, Advocate,
for respondent No.2.

KULDEEP TIWARI, J. (Oral)

1) The petitioner-workman, by way of instant writ petition filed under Article 226/227 of the Constitution of India, has approached this Court, assailing the award dated 17.06.1997 (Annexure P-5), vide which, the learned Labour Court answered the reference against him.

2) Succinctly put, the factual position, as set out in the instant writ petition, is that the petitioner was appointed as a Driver with respondent No.2-Management. He continued to work, as such, for 18 months, with average pay of Rs.1200/- per month. However, on 20.11.1992, his services were terminated, without any notice or payment of retrenchment compensation. Whereafter, he served a demand notice dated 30.11.1992, which, eventually, was sent as reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), for adjudication, 'as to whether termination of service of the

petitioner-workman is justified and in order? If no, to what relief/exact amount of compensation he is entitled?

3) The learned Labour Court, after considering the matter, and relying upon a decision of the Hon'ble Supreme Court in **Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others, 90, FJR 465 (SC)**, held that since the workman was only a daily wager, and was paid wages, as per muster roll, he was not entitled to the benefit of Section 25-F of the Act of 1947. In this way, the reference was answered against the petitioner. Hence, the instant writ petition.

4) Learned counsel for the petitioner submits that the learned Labour Court has grossly erred in law, while predicating the impugned award upon the law laid down by the Hon'ble Supreme Court in **Himanshu Kumar Vidyarthi (supra)**. He submits that the said verdict has been re-visited, thereby holding that the daily-wagers are covered under the definition of workman. He asserts that, even a Division Bench of this Court, in **The S.D.O (Civil)-cum-Authority, Ambala Improvement Trust Vs. The Presiding Officer, Labour Court, Ambala, 2001 (1) S.C.T 97**, has followed the law laid down in **State of U.P. and another Vs. Rajindra Singh Butola and another, FLR 2000 (84) 896**, which was delivered post **Himanshu Kumar Vidyarthi (supra)**, wherein, the daily-wager is considered as a workman.

5) On the other hand, learned counsel representing respondent No.2, submits that the petitioner had not completed 240 days in the preceding year, therefore, he cannot claim the benefit of Section 25-F of the Act of 1947. However, he could not refer to any law which has over-powered the proposition of law, as laid down in **The S.D.O (Civil)-cum-Authority, Ambala Improvement Trust (supra)**.

6) This Court has heard the rival submissions advanced on behalf of the contesting parties, and perused the record.

7) As demonstrated above, the reference was answered against the petitioner-workman, only on the ground that being a daily-wager, he does fall within the ambit of definition of workman, as defined under Section 2 of the Act of 1947, and he was drawing the salary, in terms of muster roll.

8) The abovesaid pivotal issue is no more *res-integra*, as, post the verdict in **Himanshu Kumar Vidyarthi (supra)**, the Hon'ble Supreme Court has delivered numerous judgments, thereby emphatically clarifying that even the daily-wager is a workman. Further, the Division Bench of this Court, in **The S.D.O (Civil)-cum-Authority, Ambala Improvement Trust**, has also taken a similar view. The relevant observations, embodied in paragraph 6, are extracted hereinbelow:-

*“Learned counsel for the petitioner has argued that respondent No.2 was a daily wager and, therefore, he could not be said to be having right on the post and his dis-engagement cannot be considered as retrenchment. He has relied on the case of **Himanshu Kumar Vidyarthi and others Vs. State of Bihar, 1997 (2) SLR 570**. As against this, there is a judgment of in **State of U.P. and another Vs. Rajindra Singh Butola and another, FLR 2000 (84) 896**. In that case, daily wager is also considered as a workman. When a different view has been taken in latter case, we follow the same.*

9) Similarly, in **Range Forest Officer, Rewari and another Vs. Sh. Ram Chander and another, 2009 (5) S.L.R. 649**, a Coordinate Bench of this Court has held that there is no law, which enunciates that a daily-rated is not entitled for relief of reinstatement in public

employments. Further, there is sufficient guidance available through various pronouncements of the Hon'ble Supreme Court and the Division Bench of this Court. While following the proposition of law as set out in such decisions and guidelines, the hereinafter observations have been recorded-

*“15 .It is not as if daily rated workers have always been shown the door with compensation package, even in cases where termination was found to be bad. In **New India Assurance Co Ltd v. A. Sankaralingam, 2008(4) SCT 373: 2008(6) RAJ 223: (2008)10 SCC 698**, a sweeper-cum-water carrier appointed on daily wages, was awarded with an order of reinstatement. The earlier decision of the same court in **Vikramaditya Pandey v. Industrial Tribunal and another, 2001(1) SCT 782: AIR 2001 Supreme Court 672** held the same view. This Hon'ble Court, through two Division Bench decisions have also held that in view of Section 25] that directed the provisions of the Industrial Disputes Act to apply notwithstanding any other law to the contrary, a daily rated worker to be entitled to reinstatement in **Dhani Ram v. Presiding Officer, Labour Court, Faridabad, 2007(1) SCT 59** and **Senior Medical Officer-in-charge, PHC, v. Sukhwinder Singh, 2007(2) SCT 112**. Which way the Hon'ble Supreme Court would ultimate guide us to apply the principles could be still a matter of time but matters cannot hang in thin air till then. The law is clear enough that there is no law that a daily rated worker is not entitled to reinstatement in public employments. There is sufficient guidance available through several erudite pronouncements of the Hon'ble Supreme Court and by the Division Bench. If the reference to all the judgments could be distilled to legal principles, they could perhaps be stated as follows :-*

(1) A workman claiming reinstatement and backwages must first show that there has been a non-compliance of statutory provisions that rendered the termination bad.

(ii) If the conditions of employment bring the cessation of work to section 2(00)(bb) of ID Act, there is no question of invoking section 25 F.

(iii) In cases of public appointments, if the initial recruitment is held to be illegal, being in violation of recruitment rules, whenever they are shown to exist, the relief reinstatement shall not be possible.

(iv) If there is no sanctioned post, the issue of regularisation just does not exist and the Court exercising powers under the ID Act shall not direct regularisation.

(v) In case of daily workers, in the event of proof of applicability of section 25F and its non-compliance, relief of re-instatement shall be perfectly justified.

(vi) However, re-instatement shall not be ordered merely because, it shall be lawful for the court to do so. The court shall take note of evidence about the nature of engagement, the availability of work or its continuing nature, the power or otherwise of the person that appointed the workman, the period of engagement, the length of litigation before court and the change in circumstances as regards the status of the employer and the workman, etc.

(vii) In the event of the Court deciding not to order reinstatement, the court shall award compensation.

16. Having set out all the principles as could be culled out from the various decisions enumerated above in this case, there had been a proof of termination without notice under Section 25F, which I have held to be bad. The reinstatement shall not be possible in a case where the job was seasonal or when the engagement had been on a project which had been proved to have been closed. The contention that the project had come to a close or the work was seasonal are statements made for the first time in the writ

petition before this Court and that had not been established before the Labour Court. If It was a disputed fact such a dispute must have been resolved before the Labour Court itself. If the Government elected to give either no evidence and would not join issues on specific contentions raised by the workman in his evidence about the nature of work, the continuous availability of work and that how the Forest Department assigns to its workers regularly various types of work depending upon the source of funding for their various projects, the workman shall still have the work to continue. In rural India, the hard reality is that it is the daily wager that sustains a whole swarm of hungry dependents. There cannot be greater tragedy than a man going to work but does not know if he is going to be engaged that day like the previous day and whether there is going to be money for him to feed himself and his family. The minimum that the law provides for a workman to be terminated, is notice of termination and compensation worked on the basis of his period of service. The compensation is to help him sustain himself and his family for the period when he may have to search for a new employment. A public body, such as a core Government department or a corporation will be flouting all norms of fairness, if the workman is going to be thrown by the wayside without following the statutory mandate of notice and compensation, even if justifying circumstances do exist for disengaging the services of the daily wager”.

10) In view of the position of law deliberated upon in the verdicts, referred to above, there is no room for doubt to hold that the impugned award is, indeed, required to be interfered with. However, at this stage, this Court is reminded that it has been the pleaded case of the respondent-Management that the petitioner-workman had not completed

240 days in the preceding year. However, the learned Labour Court has opined nothing on this crucial aspect of the matter.

11) In conspectus of the above, the impugned award is set aside. The matter is remitted to the learned Labour Court, for decision afresh, after considering all the relevant aspects of the matter. However, since the award under challenge was passed as back as in the year 1997, a Mandamus is passed upon the learned Labour Court, to take a final decision in the matter, within three months from the receipt of a certified copy of this order.

12). With the abovesaid observations, the instant writ petition is disposed of.

(KULDEEP TIWARI)
JUDGE

03.11.2025
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No