

CWP-18994-2022 (O&M) & -1-
CWP-18996-2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210+211

CWP-18994-2022 (O&M)
Date of Decision :03.03.2025

The District Fisheries Officer-cum-Chief Executive Officer
...Petitioner

Versus

Anil Kumar and others
...Respondents

CWP-18996-2022 (O&M)

The Divisional Forest Officer, Panipat
...Petitioner

Versus

Kartik and others
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

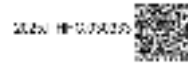
Present: Mr. Gaurav Jindal, Addl. A.G. Haryana
for the petitioner-State in both the petitions.

Mr. Rajesh Punj, Advocate with Mr. Sarvesh Rattan, Advocate
& Mr. Sehaj Punj, Advocate for respondent No.1
in both the petitions.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petitions, the challenge is to the award dated
04.03.2022 (Annexure P/1) passed by the Presiding Officer, Industrial

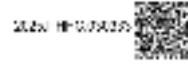


Tribunal-cum-Labour Court, Ambala by which, the benefit of reinstatement in service along with 50% back wages has been granted to the respondents-Workmen.

2. Learned counsel for the petitioner-department submits that the impugned award dated 04.03.2022 has been passed by the Labour Court without appreciating certain facts which goes to the roots of the case. Learned counsel for the petitioner-department argues that the respondents-Workmen were appointed to work with them through the outsourcing agency, which fact is clear from the act of impleading the outsourcing agency as respondents in the claim petition filed by the respondents-Workmen. Learned counsel for the petitioner-department further submits that at certain given point of time when the outsourcing agency was not releasing the payments due to the respondents-Workmen, on humanitarian ground, the payments were released by the petitioner-department on behalf of Contractor but the said fact was considered against the petitioner-department by the Labour Court so as to hold that petitioner-department was in fact the employer of the respondents-Workmen so as to grant the benefit of reinstatement in service along with 50% back wages.

3. Learned counsel for the petitioner-department further submits that even if, there has been a violation of Section 25-F of the Industrial Disputes Act, 1947 (in short, '1947 Act') but, as the respondents-Workmen were working on temporary basis with the petitioner-department, the grant of benefit of reinstatement in service along with 50% back wages is incorrect and hence, the impugned award is liable to be set aside.

4. Learned counsel for the respondents-Workmen submits that



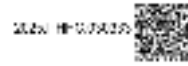
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once, the benefit of reinstatement in service along with 50% back wages has been granted by Labour Court vide its impugned award dated 04.03.2022 after declaring the order of termination as bad, then the same has to be complied with by the petitioner-department under all circumstances. Learned counsel for the respondents-Workmen further submits that once, this fact has not been proved by petitioner-department that the respondents-Workmen were employees of respondent No.3-outsourcing agency, the grant of benefit of reinstatement in service with 50% back wages is liable to be upheld.

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

6. The first question which arises for consideration is, whether the respondents-Workmen were the employees of the outsourcing agency or the petitioner-department. At the time when the claim petition was filed, the stand of the respondents-Workmen was not before the Court. Nothing has come on record to show that in case, the respondents-Workmen were not the employee of the outsourcing agency then why, K.P. Group 9, Security & Home Keeping Shop No. 2 & 3, Palikavihar, Jagadhri Gate, Amabla City was impleaded as a party in the claim petition filed by the respondents-Workmen. Once, the respondents-Workmen had impleaded the outsourcing agency as respondent in the claim petition itself, this fact clearly goes to show that the respondents-Workmen were employed through the respondent No.3-outsourcing agency.

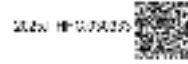
7. Further, benefit of 1947 Act has been given to the respondents-Workmen with the liability imposed upon the petitioner-department on the



ground that at some given point of time the petitioner-department had given payment as salary to the respondents-Workmen despite the fact that they were appointed through outsourcing agency.

8. It may be noticed that the relevant assertion for the fact that payment has been done by petitioner-department had already come on record that the same was done on humanitarian ground only and not otherwise. The said ground has only been disbelieved by the Labour Court on the ground that the same was not mentioned by the petitioner-department while giving salary to the respondents-Workmen. Even if, for the sake of argument it is assumed that nothing was mentioned by the petitioner-department regarding the fact that the salary was not being paid by the outsourcing agency, which is the reason that it was being paid directly by the petitioner-department to the respondents-Workmen, the Tribunal was still required to assess the said assertion on the basis of the evidence. Ignoring the said assertion especially when, the respondents-Workmen themselves have impleaded the respondent No.3-outsourcing agency as respondents in the claim petition, the findings which have been recorded by the Labour Court are perverse.

9. Even otherwise, the respondents-Workmen were working against the temporary post and not against the regular post. Another question which surfaces now is that whether, even if, there has been violation of Section 25-F of the 1947 Act, when the Workmen were not working against the regular post and the said work had already been outsourced, the grant of benefit of reinstatement along with 50% back wages is valid or not.



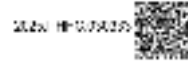
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10. The said question has already been answered by the Hon'ble Supreme Court of India while passing order in **Civil Appeal No.10957-2013 decided on 11.12.2013**, wherein it has been held that once a worker is considered as a daily wager and not on a regular post; the ends of justice would meet if compensation is granted in lieu of reinstatement by the employer. The reinstatement in service would be futile in case, the employer has passed the order of terminating the service after paying the retrenchment compensation.

11. In the present case, nothing has been brought on record by the respondents-Workmen to show that they were ever appointed by the petitioner-department and as no such appointment order was brought on record.

12. In the totality of the facts and circumstances of the present case, it is clear that the respondents-Workmen had worked for a period of two years with the petitioner-department thus, keeping in view the judgment of Hon'ble Supreme Court of India mentioned hereinbefore, granting the respondent-Workmen the benefit of reinstatement with 50% back wages is not justifiable. Though, the award is not being interfered with regard to the findings given by the Labour Court that the services of the respondents-Workmen were terminated in violation of Section 25-F of the 1947 Act but, the relief granted qua reinstatement along with 50% back wages is being modified.

13. Keeping in view the settled principle of law settled by the Division Bench of this Court in **LPA-1203-2021 titled as Sukhbir Singh vs. State of Haryana and another, decided on 01.03.2023** after considering the



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relevant provisions, the interest of justice will be served, in case, the respondents-Workmen will be granted the compensation instead of benefit of reinstatement in service. As per the judgment of the Division Bench of this Court, for every completed year the workman has worked, he/she is entitled to be paid a sum of Rs.50,000/-.

14. In the present case, as the respondents-Workmen had worked for a period of two years hence, the petitioner-department is directed to pay a sum of Rs.1,00,000/- as compensation to the respondents-Workmen. Apart from this, the respondents-Workmen will also be granted the litigation expenses being Rs.10,000/-, which have already been granted by the Labour Court in their favour. It is further held that a sum of Rs.1,00,000/- will also carry interest @ 6% per annum from the date passing of award till the actual payment of Rs.1,00,000/- is made in favour of the respondents-Workmen.

13. Present petitions are disposed of in above terms.

14. Civil miscellaneous application pending, if any, is also disposed of.

15. A photocopy of this order be placed on the file of connected case.

March 03, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No