

(2010) 03 P&H CK 0148
In the Punjab And Haryana At Chandigarh

Rajesh Tiwari

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 5 SLR 642

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—The prayer in the present writ petition is for setting aside of the Award dated 05.06.2009 (Annexure-P-11), passed by the Industrial Tribunal and Labour Court, Chandigarh, to the extent that the petitioner/ Workman (hereinafter referred to as "the Workman") has not been held entitled to reinstatement in service on the ground that his appointment was not in accordance with the statutory Rules governing the service and has been held entitled to compensation of Rs. 45,000/- in lieu of reinstatement.

2. Counsel for the Workman contends that the appointment of the Workman was in accordance with the Rules governing the service as he was appointed as a Helper-cum-Peon with respondent No. 2 on daily wage basis. His claim for regularization was taken on the Agenda (Ex.W-2) of the respondent No. 2/ Management (hereinafter referred to as "the Management"), but still the service of the Workman was not regularised on the ground that he has not completed three years with the Management. He on this basis contends that the appointment of the Workman was in accordance with law and, therefore, his case for regularisation was duly considered by the Management and thus the findings recorded by the Labour Court, vide its impugned Award that the Workman cannot be reinstated in service as he was appointed in violation of the instructions issued by the State Government as there was no post available. He

contends that a finding has been returned by the Labour Court that the Workman had completed more than 240 days in service with the management in the 12 preceding months. It has also been held that neither any show cause notice was served nor any pay was given before terminating the service of the Workman. No retrenchment compensation was also paid to the Workman at the time of termination of his service, therefore, termination of service of the Workman was held to be in violation of provision of Section 25F of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act"). Once the provisions of the Act have not been complied with and a finding has been returned that the termination of service of the Workman is not in accordance with the Act, the Workman is entitled to reinstatement in service with all consequential benefits. The impugned Award, therefore, deserves to be set aside and the Award be modified to the extent that the Workman be held entitled to reinstatement in service with all consequential benefits.

3. I have heard Counsel for the petitioner and have gone through the records of the case.

4. It is an admitted case on behalf of the Management that the Workman was appointed on purely temporary daily wage basis. It is also admitted position that prior to appointment of the Workman neither any advertisement was issued nor any interview was held or any selection process was undertaken by the Management. It is the stand of the Management before the Labour Court,, as is apparent from the written statement filed on behalf of the Management, that the Workman was engaged on daily wage basis to cope up with purely increase in casual/temporary nature of work from time to time intermittently. Even the Management Witness MW-1/Anubrat Choudhry had appeared before the Labour Court and tendered his affidavit, wherein he has supported the case of the Management as projected in the written statement. He has further stated that no person junior to the Workman was retained in service after termination of service of the Workman. The appointment of the Workman was of a casual nature in the form of contract till the completion of increased/enhanced workload. Copy of the said Affidavit is placed on record as Annexure-P-10. On the basis of evidence led by the parties, the Labour Court has come to the conclusion that the Workman had completed more than 240 days in service in the 12 preceding months from the date of his termination and the Management had not complied with the provisions of Section 25-F of the Act. Since the termination of service of the Workman was in violation of Section 25-F of the Act, the termination of the Workman from service was not in accordance with law. The Labour Court has further taken into consideration the evidence led by the parties and has rightly come to the conclusion that the appointment of the Workman was not in consonance with the statutory Rules governing the service and in violation of Articles 14 and 16 of the Constitution and, therefore, was not entitled to reinstatement in service. It was neither the claim of the Workman before the Labour Court that his appointment was in accordance with the statutory Rules governing the service nor was any question put in cross-examination to the

Management Witness in the absence of any document on record before the Labour Court, showing that his appointment was made in accordance with the Rules governing the service, the reinstatement of the Workman on a public post could not have been granted by the Labour Court.

5. The judgments relied upon by the Labour Court in coming to the conclusion are fully applicable to the case in hand and, therefore, the Award passed by the Labour Court, is fully justified and does not call for any interference by this Court. It would not be out of place to mention here that the Labour Court has rightly relied upon the judgment of Hon''ble the Supreme Court in the case of Telecom District Manager and Ors. v. Keshab Deb 2008 (4) S.C.T. 32, to hold that the appointment of the Workman, which is not in accordance with the statutory Rules governing the service, amounts to backdoor entry on a public post, so the Workman is not entitled to reinstatement in service. However, in view of the fact that the provisions of Section 25-F of the Act were not complied with by the Management, the Workman was held entitled to a compensation in lieu of reinstatement. The Award of lump-sum compensation of Rs. 45,000/- to the Workman is in accordance with law. The Workman had worked with the Management from 01.01.2000 to 30.04.2002, i.e., for about 2 years and four months, therefore, the compensation of Rs. 45,000/- as assessed by the Labour Court is fully justified, which does not call for any interference by this Court.

6. No illegality or irregularity has been committed by the Labour Court, which would call for any interference by this Court in exercise of the writ jurisdiction. Accordingly, the present writ petition is dismissed being without any merit.