
(2015) 04 P&H CK 0374

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5768 of 2013 (O&M)

Subhash Chand

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F

Citation : (2015) 3 LLJ 427

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Balraj Gujjar, for the Appellant

Final Decision : Allowed

Judgement

Amit Rawal, J—Challenge in the present writ petition is to the Award dated 13.07.2012 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar, whereby the reference has been answered in favour of the petitioner-workman on the premise that his termination was vitiated, on account of violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), but instead of ordering reinstatement along with back wages, the Tribunal has awarded compensation of Rs. 1,70,000/- for each completed year of service. Mr. Balraj Gujjar, learned counsel for the petitioner contends that the Management had appeared before the Labour Court, but, thereafter, they absented themselves and did not file any written statement and was proceeded against ex-parte. He further submitted that the workman was employed on 15.7.1989 as Beldar on monthly wages and his services were allegedly terminated on 02.03.2006 and thereafter, on 7.5.2009, he raised a demand notice when the conciliation proceedings failed and the matter was referred to the Labour Court.

2. He further submits that once there is clear finding of violation of the Section 25-F of the I.D. Act instead of ordering, grant of compensation, the workman is entitled to reinstatement along with back wages.

3. There is no representation on behalf of the Management despite service.
4. I have heard learned counsel for the petitioner and appraised the paper book.
5. It is a matter of record that during the pendency of the proceedings before the Labour Court, the petitioner-workman had moved an application calling upon the Management to produce the record with regard to the attendance register and payment of wages register for the period from 15.7.1989 to 01.03.2006 pertaining to the Beldars and other Class-IV employees, but no such record was produced and therefore, the Labour Court drew adverse inference against the Management, but despite that it granted compensation of Rs. 1,70,000/- instead of ordering reinstatement.
6. The Hon'ble Supreme Court has recently in *Jasmer Singh v. State of Haryana and Another* in Civil Appeal No. 346 of 2015 decided on 13.01.2015 while allowing the petition had given a categoric finding that where there is violation of Section 25-F of the I.D. Act instead of ordering compensation, workman is entitled to reinstatement, therefore, the petitioner is entitled to reinstatement with continuity of service. In the instant case, the petitioner-workman had rendered service of more than 17 years and is entitled for reinstatement on the principle of ratio decidendi in *Jasmer Singh v. State of Haryana and Another* (supra) case instead of awarding compensation.
7. Since the petitioner-workman has not averred in his statement that he was not gainfully employed, in view of the judgment of Hon'ble the Supreme Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others*, (2013) 6 ABR 304 : (2013) 10 AD 89 : (2013) 139 FLR 541 : (2013) LabIC 4249 : (2013) 4 LLN 417 : (2013) 11 SCALE 268 : (2013) 10 SCC 324 : (2013) 4 SCT 716 , he is not entitled to back wages. Accordingly, it is ordered that the workman shall not be entitled to back wages. However, would be entitled to reinstatement with continuity of service. Award of the Labour Court is set aside. The writ petition is, thus, allowed.