

(2009) 03 P&H CK 0256
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 269 of 2009

The Executive Engineer, P.W.D., Public Health, Division	APPELLANT
Vs	
Presiding Officer, Industrial Tribunal-cum-Labour Court and Another	RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2009) 03 P&H CK 0256

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Judgement

Augustine George Masih, J.—In the present writ petition, the challenge is to the award dated 07.12.2007 (Annexure-P-6) passed by the Industrial Tribunal-cum-Labour Court, Rohtak, vide which the reference has been answered in favour of the workman holding him entitled to reinstatement in service on his previous post with continuity of service and 50 per cent back wages from the date of demand notice i.e. 20.10.2001.

2. Counsel for the petitioner contends that the award passed by the Industrial Tribunal-cum-Labour Court, cannot be sustained. He submits that the services of the workman was terminated on the basis of a criminal case registered against him. He contends that since it was a case of punishment, therefore, the workman would not be entitled to protection of Section 25-F of the Industrial Disputes Act. He further contends that the termination of services of the workman would not be covered by the definition of retrenchment as contained in Section 2(oo) of the Industrial Disputes Act.

3. On the other hand, counsel for the respondent contends that in the present writ petition, the award has been challenged to the limited extent of back wages and therefore, the findings as recorded by the Labour Court do not deserve to be interfered with.

4. Counsel for the petitioner contends that question of law can always be raised at any stage. The pleadings and the evidence clearly indicate that the workman was appointed on daily wage basis which was not in consonance with the statutory rules governing the service. In view of the pleadings and the evidence on record, the law as decided by Hon''ble the Supreme Court would be applicable and merely because the specific prayer in the writ petition with regard to non reinstatement of the workman, would not be a ground for not deciding the case in accordance with law. The contention as raised by counsel for the petitioner, cannot be disputed with as the Court is bound by the judgments passed by Hon''ble the Supreme Court and it cannot perpetuate an illegality which has been committed by the Labour Court while passing the impugned award. In this view of the matter, the contention as raised by counsel for the petitioner cannot be accepted.

5. Counsel for the petitioner contends that since it is a public post and the same having not been filled up in consonance with the statutory rules governing the service as mandated under the constitutional scheme for filling up the public post, the award regarding reinstatement of the workman as well as back wages cannot be sustained. He relies upon the judgments of Hon''ble the Supreme Court in the cases of Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, ; Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, ; M.P. Administration v. Tribhuwan (2007) 9 S.C.C. 748 and State of M.P. and Others Vs. Lalit Kumar Verma, wherein Hon''ble the Supreme Court has held that the post under the State is required to be filled up in terms of the Recruitment Rules and by inviting applications from all eligible candidates. The workman-respondent was engaged on daily wages without following the rules and principles of Articles 14 and 16 of the Constitution of India, therefore, even if the workman-respondent has completed 240 days of service, the said workman-respondent is not entitled to be reinstated and also for grant of back wages. The respondent No. 2.-workman in the light of the Judgments of Hon''ble the Supreme Court referred to above, is not entitled to reinstatement against a public post nor is he entitled to any back wages.

6. Counsel for the respondent No. 2 relying upon the judgments of Hon''ble the Supreme Court in the case of Telecom District Manager and Ors. v. Kesheb Deb 2008 (4) S.C.T. 33 and a Division Bench of this Court in the case of State of Haryana v. Ishwar Singh and Anr. 2008(3) S.C.T. 788 contends that the workman is entitled to compensation in case he is not entitled to reinstatement as the provisions as provided u/s 25-F of the Industrial Disputes Act have not been complied with.

7. In view of the judgment of Hon''ble the Supreme Court in the case of Telecom District Manager and Ors. v. Kesheb Deb (supra) and a Division Bench judgment of this Court in the case of State of Haryana v. Ishwar Singh and Anr. (supra) the workman is held entitled to compensation in lieu of reinstatement. Since the workman has worked from 01.12.1992 to 03.03.1997 i.e. for more than six

years, the workman is held entitled to compensation of Rs. 60,000/ - in lieu of reinstatement.

8. The present writ petition is allowed. The impugned award dated 07.12.2007 (Annexure-P-6), passed by the Industrial Tribunal-cum-Labour Court, Rohtak, is set aside. The workman is held entitled to compensation of Rs. 60,000/ -

9. The management-petitioner is directed to release the said amount i.e. Rs. 60,000/ - to the respondent No. 2-workman within a period of two month from the date of receipt of copy of this order.

10. The present writ petition stands disposed of accordingly.

11. Counsel for the respondent-workman contends that the workman stands reinstated and is still working with the respondent-management. He submits that the workman will move a representation to the management which may be considered sympathetically for fresh appointment. If such a representation is made, the same be considered sympathetically by the management.