**(2010) 05 P&H CK 0088**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

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| Dalbir Sharma | | APPELLANT |
| | Vs | |
| Presiding Officer, Industrial Tribunal and Labour Court and Others | | RESPONDENT |

**Date of Decision:** May 6, 2010

**Acts Referred:**

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

**Hon'ble Judges:** Augustine George Masih, J

**Bench:** Single Bench

**Final Decision:** Allowed

**Judgement**

Augustine George Masih, J.

The prayer in the present writ petition is for quashing of the Award dated 18.11.2008 (Annexure-P-10), passed by the Industrial Tribunal and Labour Court, U.T., Chandigarh, (in short "the Labour Court"), wherein the reference had been answered against the petitioner/Workman (in short "the Workman), on the ground that the Workman had failed to prove before the Labour Court that he had completed more than 240 days in service in the 12 preceding months from the date of his termination.

2. Counsel for the petitioner/Workman contends that the Workman was appointed on 25.11.1999 as a Beldar Electrician by respondents and continued to work till 12.11.2000. He submits that it is an admitted case of the parties that no appointment letter was issued, but retrenchment notice was issued by respondents. Despite issuance of the retrenchment notice, no compensation as per the requirement of Section 25-F of the Industrial Disputes Act (in short "the Act") was paid to the Workman. This fact is also admitted by respondents. He on this basis contends that Section 25-F of the Act having been violated, the Workman should

have been granted the relief of reinstatement in service. He submits that the records of appointment, termination and period of work performed by the Workmen, who are daily wagers, is only with the respondents and, therefore, they being the custodian, are expected to maintain it and produce the same in the Court as and when summoned. Since the Workman was not having any record, he therefore had to depend upon respondents for production of the said records and accordingly, he moved an application dated 01.11.2006 before the Labour Court for summoning the records with effect from May, 2000, to August, 2000. The said application was allowed by the Labour Court. The respondents failed to produce the said records and, therefore, adverse inference should have been drawn against the respondents. In case, the adverse inference is drawn, the Workman would complete more than 240 days in service and, therefore, he is entitled to reinstatement in service with all consequential benefits. He on this basis prays that the present writ petition be allowed and the impugned Award passed by the Labour Court be set aside.

3. On the other hand, counsel for respondents submits that the appointment of the Workman was de hors the statutory Rules governing the service and in violation of Articles 14 and 16 of the Constitution of India. It is not the case of the Workman that after the termination of the service of the Workman, some other person in his place was appointed. The last extension order dated 18.08.2000 (Annexure-P-6), which has been placed on record by the Workman, clearly specifies that the appointment of the Workman was till 12.11.2000. It is not the case of the Workman that thereafter further sanction was granted and some other person was appointed on the said post. He, thus, contends that the Workman is not entitled to reinstatement in service. He contends that even if the adverse inference is drawn against the Workman and the benefit is granted to the Workman holding that the Workman had completed more than 240 days in service in the 12 preceding months from the date of his termination, the Workman would not be entitled to reinstatement in service in the light of the above and accordingly, he prays that the present writ petition deserves to be dismissed.

4. I have heard counsel for the parties and have gone through the records of the case.

5. The respondent/Management is the custodian of the records especially in the cases of daily wage employees. Thus, the Workman, who is a daily wager, is fully dependent upon the Management for production of the records as neither any appointment letter was given nor any termination letter. Even for the payments made to the Workman by the Management, no receipts or pay slips were issued. Accordingly, the Workman moved an application dated 01.11.2006 before the Labour Court, whereby the witnesses and the records were summoned. The witnesses did appear before the Labur Court, but did not produce the records, which were summoned by the Labour Court. Because of non production of the

records, the Workman was unable to prove that he had completed more than 240 days in service in the 12 preceding months from the date of his termination. By now it is a settled proposition of law that where the summoned records are not produced by the Authority, who maintains it and there is no justifiable explanation for non production of the records, adverse inference is to be drawn in such circumstances. Accordingly, the Labour Court should have drawn adverse inference. If that be so, the Workman would complete 240 days in service in the 12 preceding months from the date of his termination. This fact further is supported by the evidence, which had been brought on record and admitted by respondents that a notice for retrenchment was served upon the Workman. It is also an admitted position that such letter was not given effect to as no compensation was paid to the Workman, which fact is admitted by Respondent Witnesses before the Labour Court. In such circumstances, the only conclusion which could be drawn is that the termination of services of the Workman was in violation of Section 25-F of the Act. It is held accordingly.

6. The question now arises as to what relief the Workman would be entitled to? The appointment of the Workman was not in accordance with the statutory Rules governing the service or on a regular basis. It was in violation of Articles 14 and 16 of the Constitution of India and, therefore, the Workman cannot be reinstated in service. Another reason why this relief cannot be granted to the Workman is that there is nothing on the records, which would suggest that further sanction was granted to the post on which the Workman was performing his duties or some other person was appointed in his place after his termination.

7. Hon''ble the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , has held that no reinstatement can be granted where the appointment of the employee is de hors the statutory Rules governing the service or in violation of Articles 14 and 16 of the Constitution of India. In case, where the Industrial Disputes Act has been violated and the termination is not in accordance with said Act and the initial appointment of the Workman is not in accordance with the statutory Rules governing the service, the relief can be moulded by the Court by granting compensation to the Workman in lieu of reinstatement in service. Reliance at this stage can be made on the the judgment of Hon''ble the Supreme Court in the case of Telecom District Manager and Ors. v. Kesheb Deb 2008 (4) SCT 33, and a Division Bench judgment of this Court in the case of State of Haryana v. Ishwar Singh and Anr. 2008 (3) SCT 788. Accordingly, the Workman is held entitled to compensation for termination of his services in violation of Section 25-F of the Act.

8. In view of the above, the present writ petition is allowed. The impugned Award dated 18.11.2008 (Annexure-P-10), passed by the Industrial Tribunal and Labour Court, U.T., Chandigarh, is hereby set aside. The Workman is held entitled to compensation of Rs. 20,000/- in lieu of his reinstatement in service in the light of

judgment of Hon''ble the Supreme Court in the case of Telecom District Manager (supra), and a Division Bench judgment of this Court in the case of Ishwar Singh (supra). The amount of compensation as assessed by this Court shall be disbursed to the Workman within a period of two months from the date of receipt of certified copy of this Order.