

***IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH***

CWP No.10378 of 2013

Date of decision: 06.01.2015

Dalbir Singh

... Petitioner

Vs.

The Presiding Officer & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Vijay Pal, Advocate for the petitioner.

Mr. D.S. Nalwa, Additional Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the award dated 11.11.2011 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, at Annexure P-4 whereby while answering the reference, the petitioner/workman has been awarded a lump sum compensation of Rs.15,000/- in lieu of reinstatement.

Counsel for the petitioner would submit that the workman was appointed as Keyman Operator w.e.f. 01.01.2003 and was posted in Public Health, Sub Division, Loharu for operating tubewells and for maintaining the pipelines. It is stated that the workman served continuously up to 08.10.2004 and whereupon he was informed verbally that his services have been terminated. Counsel would argue that the workman had completed more than 240 days' in the preceding 12 months taken from the date of termination and the labour Court having recorded a finding as regards non compliance of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred to as 'the Act'), the relief of reinstatement with continuity of

service should have been granted. In support of such submission, counsel has relied upon the judgment rendered by the Hon'ble Supreme Court of India in ***Ramesh Kumar V. State of Haryana, 2010 (3) SLR 248.***

Per contra, learned State counsel would submit that the workman at best had been engaged as a daily wager and as such, he had no right on the post. It has further been contended that the labour Court has rightly granted compensation of Rs.15,000/- to the workman and as such, the impugned award does not call for any interference by this Court in exercise of its supervisory jurisdiction.

Counsel for the parties have been heard at length.

Perusal of the impugned award would reveal that the labour Court has recorded a finding of fact that the petitioner had served as Keyman Operator with the respondent/department from 01.01.2003 to 08.10.2004. Towards recording such finding, the statement of WW2, Jaibir Singh, who was employed as Beldar-cum-Chowkidar on regular basis with the Public Health Department had been noticed and who had clearly deposed that the workman had worked from 01.01.1993 upto 07.10.2004 and salary had been paid by the department. Furthermore, the workman to discharge onus as regards having completed 240 days' in the preceding 12 months from the date of termination had moved an application to summon the muster rolls/attendance register as also wage payment register for the period 01.03.2003 to 08.10.2004 and upon directions in such regard having been issued by the labour Court, Tarun Garg, Sub Divisional Engineer had appeared and had been examined as WW3. Such official stated that no attendance register had been issued by the office which could reflect the workman having served the department. However, such stand has been

viewed as false by the labour Court on the basis that while cross examining WW2, Jaibir Singh, the department had put a suggestion that the workman had been appointed only for a period of six months and upon expiry of such period, his service had been terminated. Accordingly, the labour Court has rightfully taken a view that if the workman had been employed only for six months as per the department, then the requisite record in the nature of attendance register had not been produced. Rather the photocopy, Ex.WW1 that was produced by the workman to demonstrate having worked for the period in question was duly authenticated by the Sub Divisional Engineer as regards its correctness. Labour Court further noticed that the workman had not been released any retrenchment compensation nor wages in lieu of notice period and as such, there had been violation of Section 25-F of the Act. Furthermore, as regards compliance of Sections 25-G and 25-H of the Act are concerned, it was held that the workman had not led any evidence in such regard.

The finding recorded by the labour Court with regard to the workman having completed 240 days' in the preceding 12 calendar months and non compliance of Section 25-F of the Act have not been put to challenge by the employer/respondent department by way of filing a writ petition to impugn the award. As such, this Court would proceed upon such finding recorded by the labour Court to be well founded.

The question that arises for consideration is as to whether the petitioner/workman having served as a daily wager Keyman Operator from 01.01.2003 to 08.10.2004 would be entitled to the relief of reinstatement in a situation where there has been non compliance of the provisions of Section 25-F of the Act.

Precisely, the same very question came up for consideration before the Hon'ble Supreme Court in ***Assistant Engineer, Rajasthan Dev. Corp. and Anr. v. Gitam Singh, 2013 (2) SCT 30*** and it was held as under:

“In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute.”

In the present case, the conceded position is that the petitioner/workman had been engaged as Keyman Operator on daily wages. Such engagement was not in pursuance to any regular recruitment process. The service rendered by the workman is for a period of less than 2 years. Under such circumstances, the discretion has been exercised rightfully by the labour Court while declining the relief of reinstatement to the petitioner/workman.

The benefit of the judgment of the Apex Court in ***Ramesh Kumar's case (supra)*** would not enure to the petitioner. It may be noticed that Ramesh Kumar had been appointed as Mali on casual basis in the

Public Works Department (B&R), Haryana in December, 1991 and had served upto 31.01.1993, when his services were terminated without any notice or retrenchment compensation. Upon industrial dispute having been raised, the labour Court had directed reinstatement with continuity of service with 50% back wages. The State of Haryana had challenged the award of the labour Court by filing CWP No.575 of 2004 in this Court. Vide judgment dated 23.12.2008, the High Court set aside the award of the labour Court granting reinstatement and back wages. The matter having been taken up to the Hon'ble Supreme Court of India, the judgment of the High Court dated 23.12.2008 was set aside and Ramesh Kumar was granted the relief of reinstatement. However, it was a case, where the Apex Court had held that it was a case of hostile discrimination by the department. Material and documents had been adverted to which had reflected that in respect of some of the workmen, who were appointed and terminated along with Ramesh Kumar and after similar awards having been passed by the labour Court, the department did not even challenge the same before the High Court by filing writ petitions and in some other cases, where a challenge was made before the High Court and after dismissal of the writ petitions those workmen had been reinstated and furthermore their services had even been regularized. The facts in Ramesh Kumar's case (supra) are clearly distinguishable and such judgment would have no applicability in the present case.

In view of the reasons recorded above, this Court does not find any basis that would warrant interference in the view taken by the labour Court in the impugned award with regard to declining the relief of reinstatement to the petitioner/workman.

However, this Court is of the considered view that the

compensation of Rs.15,000/- awarded to the petitioner/workman is on the lower side.

In ***Bharat Sanchar Nigam Limited Vs. Man Singh, 2012, (1) SCT 641***, the Apex Court had granted compensation of Rs. 2 lacs to each of the workman when they had worked on daily wage basis for a period slightly more than 240 days' and upon their termination having been set aside on account of violation of Section 25-F of the Act. In the case of ***BSNL Vs. Bhurumal, 2014 (3) SCT 49***, the termination of a daily wager had taken place more than 11 years back and even though he had claimed to have worked over a period of 15 years, the Apex Court had noticed that there was no direct evidence forthcoming with regard to 15 years service having been rendered and had awarded compensation of Rs.3 lacs.

Following the afore noticed judicial precedents, this Court is of the considered view that the ends of justice would be met by enhancing the compensation awarded by the labour Court in the impugned award from Rs.15,000/- to Rs.1.5 lacs.

But for such modification as regards enhancement of compensation from Rs.15,000/- to Rs.1.5 lacs, the impugned award dated 11.11.2011 at Annexure P-4 is upheld and the writ petition is dismissed.

It is directed that the enhanced compensation shall be paid and released to the petition/workman within a period of eight weeks' from today, failing which, the same shall carry interest at the rate of 8% per annum.

Petition dismissed.

January 06, 2015.

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether referred to the Reporter?

Yes