

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.21336 of 2012

RESERVED ON: FEBRUARY 05, 2015

DATE OF DECISION: MARCH 20, 2015

Balwan Singh

.....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.....Respondents

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

Present: Mr.SK Verma, Advocate for the petitioner.

Mr.Ravi Pratap, Assistant Advocate General, Haryana.

<><><>

TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the award dated 20.4.2012, Annexure P3, passed by the Industrial Tribunal-cum-Labour Court, Hisar whereby while deciding the reference, the petitioner-workman has been denied the relief of reinstatement in service and has been awarded compensation of ₹10,000/- instead.

2. Learned counsel appearing for the petitioner would submit that the workman had been engaged as a Beldar on 16.1.2007 under the Executive Engineer, Public Health Division, Charkhi Dadri, District Bhiwani and had worked continuously upto

16.10.2007. It is further submitted that the services of the workman had been terminated without issuance of any prior notice, pay in lieu of notice period and without release of retrenchment compensation. It is contended that since the workman had completed 240 days in the calender year preceding the date of termination, and there had been non-compliance of the mandatory provisions of Industrial Disputes Act, 1947 (for short 'the Act'), the relief of reinstatement with continuity in service could not have been denied. Learned counsel would argue that the Labour Court has awarded compensation instead of reinstatement on the basis that the initial engagement of the workman was dehors the Rules as no applications had been invited from the general public to fill up the post nor the names of eligible candidates were called from the Employment Exchange. Learned counsel would contend that the Management/employer had chosen not to appear before the Labour Court and, accordingly, had been proceeded exparte and under such circumstances, there was no occasion for the Labour Court to have held the initial appointment of the workman to be not in consonance with any regular selection/recruitment process. It has also been argued that in the claim statement, it had been specifically averred that the post against which the petitioner had been assigned to work was of a permanent nature and was still in existence and such stand having not met with any rebuttal by the employer before the Labour Court, the workman was vested with the right to be reinstated in service. Learned counsel has also placed reliance upon the judgment of the Hon'ble Supreme Court

of India in **Harjinder Singh v. Punjab State Warehousing Corporation Ltd.**, 2010 (3) SCC 192 and would argue that a finding having been returned as regards non-compliance of Section 25-F of the Act, even a daily wager would be entitled to reinstatement in service.

3. Per contra, learned State counsel would state that the impugned award is well reasoned and appropriate relief of compensation of ₹10,000/- has been quantified by the Labour Court against the backdrop of length of service of the workman as a daily wager and the same would not call for any interference by this Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India.

4. Learned counsel for the parties have been heard at length.

5. The pleaded case of the petitioner-workman himself is that he was engaged as a Beldar on 16.1.2007 and had worked continuously upto 16.10.2007. As per demand notice dated 4.12.2009, Annexure P1, even though it was asserted that the post and work assigned to him was of a permanent nature, but it stands conceded that he was engaged on daily wage basis. Workman had taken a stand before the Labour Court that for the period of service rendered i.e. from 16.1.2007 to 16.10.2007, his attendance had been marked in the attendance register being maintained at the concerned Water Works and he had placed on record a photo copy of the said register as Exhibit W3. Even a log book was stated to have been maintained at the Water Works and a copy thereof was placed on record as Exhibit W2. Concededly,

the Management/employer had been proceeded exparte.

6. The Labour Court, apart from taking notice of the documents at Exhibits W3 and W2, had also taken note of the fact that the workman had moved an application before the appropriate authority under the Payment of Wages Act at Bhiwani to claim earned wages for the period from 16.1.2007 to 16.10.2007 and even though the Department had denied the relationship of employer and employee between the parties and had pleaded that the employment of the workman was through a Government contractor, yet such stand of the Management had not been accepted by the Authority under the Payment of Wages Act and order had been passed directing the payment of wages to the workman for the period 16.1.2007 to 16.10.2007 amounting to ₹26,339.64p with equal amount as penalty. Copy of such order was placed on record by the workman as Exhibit P4. Such evidence having not been rebutted, the Labour Court recorded a finding of fact as regards the workman having served continuously from 16.1.2007 upto 16.10.2007 and as he had not been given one month's notice mentioning reasons for retrenchment nor wages in lieu of notice period nor retrenchment compensation, the action was found to be in violation of Section 25-F of the Act. Further more, since the workman had not disclosed the name of any person junior to him who had been retained in service at the stage of termination or having been recruited thereafter, it was held that there was no violation of Sections 25-G and 25-H of the Act.

7. Such findings are based on due appreciation of

evidence, and in any case, have not been assailed by the Management/employer in terms of impugning the award. The findings recorded by the Labour Court are, as such, held to be well-founded.

8. The only question that now arises for consideration is as to whether the petitioner-workman, who had worked for a period of nine months as a daily wager and his termination having been held to be in contravention of Section 25-F of the Act, is entitled to the relief of reinstatement with continuity in service?

9. In **Bharat Sanchar Nigam Ltd. v. Man Singh, 2012(1) SCT 641**, the Hon'ble Supreme Court had held that when termination is set aside on account of violation of Section 25-F of the Act, it is not necessary that relief of reinstatement be also given as a matter of right. In a recent judgment of Hon'ble Supreme Court in **B.S.N.L Vs. Bhurumal, 2014 (3) S.C.T 49**, the earlier view taken by the Court in **Jagbir Singh v. Haryana State Agriculture Marketing Board, 2009(3) SCT 790** was approved. In **Jagbir Singh's** case (supra), it was held that in the recent past, there had been a shift in the legal position and the Court had consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation, even though termination of an employee was in contravention of the prescribed procedure. Compensation instead of reinstatement was held to be the prudent relief to meet the ends of justice.

10. The judgment in **Harjinder Singh's** case (supra) came to be considered in **Assistant Engineer, Rajasthan Development**

Corporation and another v. Gitam Singh, 2013 (2) S.C.T, 30 and it was held in the following terms:-

“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 a long list of cases has held that the award of reinstatement cannot be said to be the 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.”

11. Even a Division Bench of this Court in L.P.A No.890 of 2014 titled as **B.P.S. Mahila Vishvavidyalaya** decided on 1.7.2014 has followed the judgments of the Hon'ble Apex Court in **Bhurumal's and Gitam Singh's** cases (supra) and has taken a view that in the case of a daily wager, who had worked only for a

period of 1-½ years and there being non-compliance of Section 25-F of the Act, the proper and just relief would be compensation instead of reinstatement and accordingly, an amount of ₹3 lacs was awarded as compensation to the workman.

12. In the present case, concededly, the petitioner-workman was engaged on daily wage basis. It is the case of the workman himself that he had worked from 16.1.2007 to 16.10.2007. Applying the dictum laid down by the Hon'ble Supreme Court in **Gitam Singh's** case and **Bhurumal's** case (supra), this Court does not find any infirmity in the impugned award dated 20.4.2012 vide which the relief of reinstatement has been denied to the workman and compensation instead has been awarded.

13. However, this Court is of the considered view that the quantum of compensation awarded i.e. ₹10,000/- deserves enhancement. In the case of **Man Singh** (supra), the daily wage workman was awarded a compensation of ₹2 lacs on account of non-compliance of Section 25-F of the Act and upon having worked a little more than 240 days, but the facts were peculiar. The Labour Court in the facts of that case had rendered award directing reinstatement. The award of reinstatement was upheld even before the High Court as the writ petitions filed by the Department impugning the award had been dismissed. However, the Hon'ble Supreme Court had intervened by distinguishing the rights of a daily wager who does not hold a post as opposed to a permanent employee and had converted the relief of reinstatement to that of compensation and by awarding ₹2 lacs.

In the case of **Gitam Singh** (supra), the workman had worked for a period of almost eight months and compensation of ₹50,000/- had been awarded.

14. In the considered view of this court, compensation of ₹1 lac to the petitioner-workman would meet the ends of justice. Ordered accordingly. Such payment be made to the petitioner within eight weeks from today, failing which the same shall carry interest @ 8% per annum.

15. But for such modification as regards enhancement of compensation from ₹10,000/- to ₹1 lac, the impugned award dated 20.4.2012 is upheld and the writ petition is dismissed.

MARCH 20, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to the Reporter? (Yes/No)