

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 2071 of 2014 (O&M)

Date of Decision: 27.1.2015.

Gursewak Singh

--Petitioner

Versus

Presiding Officer & others

--Respondents

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

Present:- Mr. S.S. Chauhan, Advocate for the petitioner.

Mr. Anant Kataria, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

This order shall dispose of CWP No.2071 of 2014 titled as Gursewak Singh Vs. Presiding Officer & others and CWP No.2086 of 2014 titled as Labh Kaur Vs. Presiding Officer & others as identical issue is involved in these two petitions.

Challenge in these petitions is to the awards passed by the Industrial Tribunal, Patiala both carrying even date i.e. 14.10.2013, whereby the reference has been answered in favour of the petitioners herein and lump sum compensation of Rs.15,000/- in lieu of reinstatement, has been awarded.

Learned counsel for the parties have been heard.

Briefly noticed, petitioner Gursewak Singh (CWP No.2071 of 2014) had raised an industrial dispute by claiming that he was appointed as Ward Attendant on 17.6.1994 by the Civil Surgeon, Fatehgarh Sahib on 89 days basis. Thereafter, his services were extended at regular intervals for 89 days after giving notional breaks of 2-3 days. His services were terminated on 4.12.1996 and without complying with the provisions of the Industrial

Disputes Act (herein after to be referred as the Act).

Labh Kaur, petitioner in CWP No.2086 of 2014 had likewise raised industrial dispute that she had been appointed as Ward Attendant by Civil Surgeon, Fatehgarh Sahib on 89 days basis on 19.4.1994. Her services had also been extended on 89 days basis with notional breaks of short periods. Her services were terminated on 3.12.1996 in derogation of the provisions of the Act.

In the impugned awards both dated 14.10.2013, a finding has been recorded as regards violation of Section 25-F of the Act but the Tribunal has found it to be a fit case for awarding compensation in lieu of reinstatement with continuity in service. Accordingly, lump sum compensation of Rs.15,000/- has been awarded to both the petitioners in these petitions.

The finding of fact that has been recorded by the Tribunal and that too upon due appreciation of evidence adduced on record is that the petitioners herein had worked for more than 240 days in the 12 preceding months taken from their date of termination. Both the petitioners had not been granted any retrenchment compensation, no notice had been served and neither any wages in lieu of notice period had been paid. Further finding recorded is that the petitioners had not been initially appointed in pursuance to any regular selection process and even after their termination the employees that have been recruited by the management were on a regular basis.

The management has not assailed such findings recorded by the Tribunal in terms of filing any writ petition and as such this Court would proceed by taking the findings as regards non-compliance of Section 25-F

of the Act to be well founded.

In a recent judgement of the Hon'ble Supreme Court of India in case of ***B.S.N.L. Vs. Bhurumal, 2014 (3) S.C.T. 49*** an earlier view taken in case of ***Jagbir Singh Vs. Haryana State Agriculture Marketing Board, 2009 (3) S.C.T 790***, was affirmed. The relevant observations in **Jagbir Singh's** case (supra) which met the approval of the Hon'ble Supreme Court in **Bhurumal's** case (supra) were in the following terms:-

“It is true that the earlier view of this Court articulated in many decisions reflected a legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in the recent past, there has been a shift in the legal position and in a long line of cases, this court has 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 the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

In the facts of the present case the service rendered by both the petitioners was for a period of almost two years. Their engagement was not on a regular basis. Even the demand notice had been issued after a considerable length of time. Under such circumstances, the discretion has been exercised rightfully by the Tribunal while declining the relief of reinstatement to the petitioners herein.

It would be apposite to notice that even when these petitions came up for initial hearing, counsel had not pressed the prayer for reinstatement but had rather argued that compensation of Rs.15,000/- in lieu of 2 ½ years of service was very meager.

This Court finds merit in such submission.

A Division Bench of this Court in **L.P.A No.890 of 2014** titled as **B.P.S. Mahila Vishwavidyalay Vs. Mukesh Kumar and others** decided on 1.7.2014 had followed the dictum laid down by the Hon'ble Apex Court in **Bhurumal's** case (supra) and as such, had modified the award of the Labour Court ordering reinstatement in service of a daily wager along with 50% back wages and had granted compensation of Rs.3 lacs instead. In case of **Bharat Sanchar Nigam Limited Vs. Man Singh, 2012 (1) S.C.T 641** the Hon'ble Apex Court has granted compensation of Rs.2 lacs to each of the workmen 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.

Following the aforenoticed judicial precedents, this Court is of the considered view that the ends of justice would be met by enhancing the compensation awarded by the Tribunal in the impugned awards from Rs.15,000/- to Rs.2 lacs to each of the petitioners.

But for such modification as regards enhancement of compensation from Rs.15,000/- to Rs.2 lacs each, the impugned awards both dated 14.10.2013 at Annexure P-6 in both the writ petitions, are upheld and the writ petitions are dismissed. It is directed that the enhanced compensation shall be paid and released to the petitioners within a period of eight weeks from today failing which the same shall carry interest @ 8% per annum.

Petitions dismissed.

Pending applications, if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

January 27, 2015.
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Whether to be referred to Reporter? Yes.