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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. LPA-526-2009

Date of Decision : December 8th, 2015

Mahesh Parshad Appellant

Versus

The Shivalik Development Agency and another
.... Respondents

2. LPA-531-2009

Ms. Kiran Bala Appellant

Versus

The Shivalik Development Agency and another
.... Respondents

3. LPA-532-2009

Ramesh Kumar Appellant

Versus

The Executive Engineer, PWD [Public Health] and another
.... Respondents

4. LPA-738-2009

Jai Narain Appellant

Versus

Haryana Seeds Development Corporation Ltd. and another.
.... Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

1. Whether Reporters of local papers may be allowed to see the judgment?

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2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr. C.M.Chopra, Advocate,
for appellants in LPA Nos. 526 and 531 of 2009.

Mr. Ashwani Bakshi, Advocate,
for appellant in LPA No. 532 of 2009.

Mr. Bhupinder Malik, Advocate,
for appellant in LPA No. 738 of 2009.

Mr. R.K.Malik, Senior Advocate,
with Mr. Vijay Dahiya, Advocate,
for respondent No.1 in LPA Nos. 526 and 531 of 2009

Mr. Sudeep Mahajan, Addl.A.G. Haryana
for respondent No.1 in LPA No. 532 of 2009.

Mr. Vishal Malik, Advocate,
for respondent No. 1 in LPA No. 738 of 2009.

SHEKHER DHAWAN, J.

The above mentioned four intra-court appeals, bearing LPA Nos. 526, 531, 532 and 738 of 2009, under Clause X of the Letters Patent are being disposed of by this common order as the controversy involved in all the appeals is the same. For facility of reference, facts from LPA No. 526 of 2009 are being taken.

2. Mahesh Parshad, the workman raised an industrial dispute which was decided by Labour Court, Ambala and he was directed to be reinstated with all consequential benefits vide award dated 29.9.2008. Feeling aggrieved of passing of the said award dated 29.9.2008, the respondent – Shivalik Development Agency, Ambala filed Civil Writ Petition No. 1563 of 2009 and the same was disposed of by learned Single Judge with a direction to pay an amount of Rs. 40,000/- to the workman for the period he had worked [From 25.8.1998 to 22.8.2002 - four years], i.e. @ Rs.

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10,000/- per year of service rendered by the workman.

3. The compensation awarded to the workmen in all these four LPAs is as under:

LPA No.	Period	Amount of compensation awarded	Rate per year of service
526/2009	25.8.1998 to 22.8.2002 About four years	Rs.40,000/-	Rs.10,000/-
531/2009	15.09.1999 to 5.12.2002 About 3-1/2 years	Rs.35,000/-	Rs.10,000/-
532/2009	1.5.1995 to 27.8.1997 Two years	Rs.50,000/-	Rs.25,000/-
738/2009	27.11.1984 to 26.11.86 Two years	Rs.25,000/-	Rs.12,500/-

4. Learned counsel for the appellants urged that the workmen were duly appointed through Employment Exchange on contract basis for 89 days and the tenure was being extended from time to time with notional breaks. Their services were terminated with *mala fide* intentions so that they may not get the benefit of regularization policy of the State Government, which was in operation at the relevant time. However, learned Single Judge mis-appreciated the facts that the workmen got extensions from time to time and the management allowed them to continue in service with notional breaks although, they had put in more than 240 days of service in a calendar year. The said act on the part of the management amounts to 'unfair labour practice' and the services of the appellant-workmen were terminated in contravention of provisions of Section 25-F[1] of the Industrial Disputes Act, 1947 and the workmen were entitled to reinstatement.

5. Learned counsel for the appellants in LPA Nos. 526, 531 and 738

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of 2009 also submitted that even well reasoned awards passed by the Labour Court have been wrongly set-aside by learned Single Judge. More so, inadequate compensation has been awarded @ 10,000/- for each completed year of service, which is against the settled law. So, the impugned orders passed by learned Single Judge be set-aside and the workmen be reinstated into service and the awards passed by learned Labour Court in this behalf be restored.

6. In addition to above, learned counsel for the appellant in LPA No. 532 of 2009 has submitted that the persons lower in seniority list have been taken in service and are working in compliance with the awards passed in their favour.

7. Learned counsel for the respondents submitted that learned Single Judge has already taken care of the fact that the workmen are entitled to compensation though, their appointment was on daily wage basis and not on regular basis and have adequately granted the compensation to the workmen. As such, the present LPAs are liable to be dismissed.

8. We have considered the submissions made by learned counsel for the parties and are of the view that most of the facts are not disputed that the appellants were seeking reinstatement on a public post. Needless to mention that such posts are to be filled up strictly in view of provisions of Articles 14 and 16 of the Constitution of India. The appointments of the appellants were not made on regular basis, although the same were against regular posts. Due procedure was required to be followed to fill up such posts by inviting applications from general public thereby giving opportunity to one and all to participate in the selection. Learned Single

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Judge have rightly formed the opinion that the appellants were not entitled to reinstatement, but at the same time, they are held entitled to seek compensation for the period they had worked with the respondents-management. As regards the plea taken by learned counsel for the appellant in LPA No. 532 of 2009 that persons lower in seniority have been taken by the respondent-management, that was not done on the basis of any order passed by the Court.

9. Learned counsel for the appellants, during the course of arguments, also took the plea that even the compensation has not been awarded adequately as the same comes to around Rs.10,000/- for each completed year of service.

10. Having considered the factual and legal proposition, we are of the view that learned Single Judge has rightly formed the opinion that the appellants are not entitled to seek the relief of reinstatement as the posts held by them were to be filled up after complying with the provisions of Articles 14 and 16 of the Constitution of India after giving due opportunity to one and all. At the same time, we are of the view that the appellants in LPA Nos. 526, 531 and 738 of 2009 are certainly entitled to get reasonable compensation which has not been awarded suitably as the same has been accorded @ Rs.10,000/- for each completed year of service. More so, Ramesh Kumar, appellant in LPA No. 532 of 2009, has already been granted compensation @ Rs.25,000/- for each completed year of service to his credit. Thus, we are of the view that the compensation should be awarded to all the appellants at the same rate. Accordingly, we dispose of LPA Nos. 526, 531 and 738 of 2009 with the direction that the appellants are not entitled to seek reinstatement, but are entitled to seek

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compensation @ Rs.25,000/- for each completed year of service. The respondents-Management shall pay the enhanced amount of compensation to the appellants within a period of two months from the date of receipt of a copy of this order, otherwise, the appellants will be entitled to interest @ 9% per annum thereon.

11. LPA No.532 of 2009 stands dismissed as the appellant, therein, has already been granted compensation @ Rs.25,000/- for each completed year of service by learned Single Judge.

12. Resultantly, LPA Nos. 526, 531 and 738 of 2009 are disposed of with aforesaid modification, whereas LPA No. 532 of 2009 stands dismissed being devoid of any merit.

(SATISH KUMAR MITTAL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

December 8th, 2015
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