

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.1115 of 2015 (O&M)
Date of Decision: 29.07.2015

Punjab State Forest Development Corporation Ltd.
and others

..... Appellants

Versus

Rajinder Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. A.P.S. Sandhu, Advocate
for the appellants.

S.S. Saron, J.

The letters patent appeal has been filed by the Punjab State Forest Development Corporation Ltd. ('Corporation' - for short) through its Managing Director; the Divisional Manager of the Corporation, SAS Nagar Mohali and the Project Officer of the Corporation, Patiala (appellants) against the judgment and order dated 02.12.2014 passed by the learned Single Judge in CWP No.22674 of 2013. Along with the appeal, CM No.2340-LPA-2015 has been filed seeking condonation of 83 days' delay in filing the appeal, besides, CM No.2341-LPA-2015 has been filed seeking condonation of 76 days' delay in re-filing the appeal.

For the reasons stated in CM No.2341-LPA-2015, delay of 76 days in re-filing the appeal is condoned.

Rajinder Singh (respondent No.1-workman) filed a petition under Articles 226/227 of the Constitution of India seeking quashing of the award dated 25.07.2013 (Annexure P3) passed by

the learned Industrial Tribunal, Patiala ('Tribunal' - for short) (respondent No.2) to the extent he had not been granted reinstatement in service along with consequential relief and back wages and instead granted compensation of Rs.10,000/-. He prayed for reinstatement in service along with continuity of service and back wages.

The learned Single Judge held that the compensation of Rs.10,000/- awarded to respondent No.1-workman in lieu of almost 2 ½ years of service rendered by him on daily wage basis was much on the lower side. A sum of Rs.2.00 lacs was awarded as compensation in place of Rs.10,000/- and the impugned award dated 24.07.2013 (Annexure P3) but for the modification was upheld. The appellants assail the said order of the learned Single Judge.

The respondent No.1-workman submitted that he joined the Corporation as Helper/Chowkidar and had put in five years continuous services but his services were wrongly, illegally, malafidely, arbitrarily and unjustly terminated on 01.05.2003 without any notice, charge-sheet and without fair and proper inquiry or compensation. He was drawing salary of Rs.2260/- per month on the date of his illegal termination from service. A prayer was made for his reinstatement.

The respondent No.1-workman through his authorized representative Shri R. K. Moudgil raised an industrial dispute by serving a demand notice dated 02.06.2005. Conciliation proceedings were carried out but these remained unsuccessful. The dispute was then referred by the Deputy Labour Commissioner,

Punjab, Chandigarh to the Industrial Tribunal, Patiala under Section 2-A and Section 10 (1) (c) of the Industrial Disputes Act, 1947 ('Act' - for short) vide endorsement dated 21.11.2005. The reference was to the effect:-

“Whether termination of the services of the workman Rajinder Singh by the respondent (now appellant) is illegal and unjustified? If, not, to what relief the workman is entitled to?

The respondent No.1-workman filed his statement of claim dated 02.01.2006 (Annexure P1) stating that he worked with the Project Officer of the Corporation at Patiala (appellant No.3) from November, 2000 to 30.04.2003 and his attendance was not marked w.e.f. 01.05.2003.

Notice of the reference was issued to the appellants. The claim of the workman was contested by them by filing a written statement dated 27.01.2006 (Annexure P2). It was stated that the Corporation was not an 'industry' and the respondent No.1 not a 'workman' as defined under the Act. Besides, the workman had not completed 240 days of service in the preceding calendar year. It was also submitted that the workman was working with the appellants as a casual labourer on daily wage basis. He used to work on daily wage basis and paid wages for the day he actually served the appellants. He never worked with the appellants at Patiala. He was neither given any appointment letter nor any termination letter was issued to him. He was called on duty on the availability of work. The workman it is stated had been employed gainfully and was earning more wages than he was drawing from

the appellants during his tenure with it. Therefore, he was not entitled for any relief as claimed by him. The learned Tribunal framed the following issues:-

- "1. Whether the reference is maintainable inspite of the preliminary objections taken in the written statement? OPW
2. Whether termination of services of the workman is proper and justified? OPW
3. Whether the workman is entitled to get any relief from the respondent (now appellant)? OPW.
4. Relief."

The learned Tribunal vide its award dated 24.07.2013 (Annexure P3), on consideration of the matter held that the respondent No.1-workman worked for more than five years with the appellant-Corporation and for a period of more than 240 days in the year immediately preceding his termination. It was held that the services of the respondent No.1-workman were terminated without any notice or payment of compensation which was in violation of Section 25-F of the Act. However, it was held that he could not be provided work or reinstated as the work of cutting trees had since been allotted to the contractors. It was found to be a fit case for awarding compensation to him. Taking into consideration the fact that he had worked with the Corporation for more than five years and at the time of his termination he was drawing Rs.2080/- as salary and the reference had remained pending for eight years, it was held that the interest of justice would be served, if

compensation of Rs.10,000/- was directed to be paid to him by the appellants. Accordingly, the respondent No.1-workman was awarded compensation of Rs.10,000/- by the learned Tribunal which was to be paid within 45 days of the publication of the award, failing which he would be entitled to the awarded amount along with interest @ 6% per annum, from the date of passing of the award i.e. 24.07.2013 till its realization.

The respondent No.1-workman aggrieved against the award dated 24.07.2013 (Annexure P3) passed by the learned Tribunal filed a writ petition in this Court. The learned Single Judge, on consideration of the matter held that the learned Tribunal had rightly exercised its discretion in denying respondent No.1-workman the relief of reinstatement in service. A reference was made to the judgments of Hon'ble the Supreme Court in Assistant Engineer, Rajasthan Development Corporation and anr. v. Gitam Singh, 2013 (2) SCT 30 and B.S.N.L. v. Bhurumal, 2014 (3) SCT 49, wherein it was held that in the case of a daily wager whose services were terminated in violation of Section 25-F of the Act, the appropriate remedy would be to pay compensation in lieu of reinstatement. It was, however, held that the compensation of Rs.10,000/- which was awarded to the respondent No.1-workman in lieu of almost 2½ years' service rendered by him on daily wage basis was much on the lower side. A reference was made to the case; Bharat Sanchar Nigam Limited v. Man Singh, 2012 (1) SCT, 641, wherein Hon'ble the Supreme Court awarded a compensation of Rs.2.00 lacs to a daily wager lineman who had completed a little more than 240 days of service and whose services had been terminated in violation

of the provisions of Section 25-F of the Act. It was considered that the ends of justice would be met if compensation awarded to the respondent No.1-workman was enhanced to Rs.2.00 lacs. Accordingly, the award of the learned Tribunal was modified and compensation payable to respondent No.1-workman was enhanced from Rs.10,000/- to Rs.2.00 lacs.

The appellants aggrieved against the amount of compensation of Rs.2.00 lacs that has been awarded by the learned Single Judge have filed the present appeal.

After giving our thoughtful consideration to the matter, we are of the view that the learned Tribunal in its award dated 24.07.2013 (Annexure P3) held that the respondent No.1-workman had worked for more than five years with the appellant-Corporation and for a period of more than 240 days in the year immediately preceding the date of his termination. His services were held to be terminated in violation of the provisions of Section 25-F of the Act. It was further held that taking into consideration the fact that the respondent No.1-workman worked with the appellant-Corporation for more than five years and at the time of his termination, he was drawing Rs.2080/- per month as salary and the reference had remained pending in the Tribunal for about eight years, the interest of justice would be served if compensation for a sum of Rs.10,000/- was awarded to him. Besides, it was held that as the respondent No.1-workman had raised an industrial dispute by way of filing a demand notice and after failure of conciliation proceeding, the dispute was referred to the learned Tribunal by the appropriate government for adjudication, the reference was held to be

maintainable. All the issues were answered in favour of the workman and against the respondents.

It is to be noticed that the appellant-Corporation did not assail the findings of the learned Tribunal by way of a petition in this Court that the respondent No.1-workman had worked for a period of five years. The learned Single Judge, however, took the services of the respondent No.1-workman to be of 2 ½ years.

The learned Tribunal in its order dated 24.07.2013 (Annexure P3) made a reference to the affidavit (Ex.W1) submitted by the respondent No.1-workman wherein he stated that he was working as Helper/Chowkidar and had put in five years continuous service and was drawing salary of Rs.2260/- per month when his services were wrongfully, illegally, malafidely, arbitrarily and unjustly terminated on 01.05.2003. He further stated that he worked at Patiala with the Project Officer of the Corporation (appellant No.3) from November 2000 to 30.04.2003 and his attendance was not marked by the Project Officer of the Corporation (appellant No.3) w.e.f. 01.05.2003. He used to meet the higher authorities of the Corporation for providing him duty but they had been putting him off for one or the other reason. In writ petition that was filed by respondent No.1-workman, he stated that he joined the service of appellant-Corporation as Helper/Chowkidar in the year 1998.

In this regard, it may be noticed that in fact respondent No.1-workman had stated that he worked with the appellant-Corporation from November 2000 to 30.04.2003 and thereafter, his attendance was not marked by the appellant-Corporation w.e.f.

01.05.2003. In case, the said statement is to be taken into account then the service rendered by him works out to 2½ years only. However, in the writ petition, he stated that he joined as Helper/Chowkidar in the year 1998. This was not his stand before the learned Tribunal. As such it cannot per se be said that he had worked for a period of five years. Nevertheless in case the deposition of respondent No.1-workman in his affidavit (Ex.W1) is to be taken as an admission that he worked from November 2000 to 30.04.2003, then the admission is to be read as a whole and the fact that he further stated that thereafter his attendance was not marked is also liable to be accepted and it cannot be accepted to the extent that suits the appellant-Corporation.

Be that as it may, it is to be noticed that the compensation of Rs.2.00 lacs that has been ordered to be paid by the learned Single Judge is taking into consideration, the period of 2½ years of service whereas in fact he was held by the learned Tribunal to have worked for a period of five years, which was not assailed by the Corporation. Therefore, the amount of Rs.2.00 lacs as compensation that has been awarded cannot, in any manner, be said to be excessive. Besides, Hon'ble the Supreme Court in Assistant Engineer, Rajasthan Development Corporation and anr. v. Gitam Singh (supra) referred to by the learned Single Judge with regard to wrongful termination of a daily wager, who had worked for a short period, observed that it had been said in a long list of cases that the award of reinstatement could not be said to be the proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. It was held that

before exercising its judicial discretion, the Labour Court had to keep in view all other relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination had been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute. Besides, in *B.S.N.L. v. Bhurumal* case (supra), also referred to by the learned Single Judge, it was said that the ordinary principle of grant of reinstatement with full back wages, when the termination was found to be illegal was not to be applied mechanically in all cases although that may be the position where services of a regular/permanent workman were terminated illegally and/or *mala fide* and/or by way of victimization, unfair practice, etc. However, when it came to a case of termination of a daily wage worker and where the termination was found illegal because of a procedural defect, namely, in violation of Section 25-F of the Act, it had been the consistent view of the the Supreme Court that in such cases reinstatement with back wages was not to be automatic and instead the workman would be given monetary compensation which would meet the ends of justice. Moreover, in *Bharat Sanchar Nigam Ltd.v. Man Singh* (supra), Hon'ble the Supreme Court awarded Rs.2.00 lacs as compensation to a daily wager, who had completed little more than 240 days of service and whose termination from service was found to be in violation of Section 25-F of the Act. Therefore, the compensation of Rs.2.00 lacs that has been awarded to respondent No.1-workman is just and proper.

In the circumstances, there is no merit in the appeal. As regards the question regarding delay in filing the appeal, the same

is only academic. However, in any case, no substantial cause has been made out for condoning the delay of 83 days in filing the appeal. It is merely mentioned that as formalities of the department could not be completed in time that delay had occurred although there was no intention or negligence on the part of the department for the said delay. The same is hardly any cause much less substantial cause for condoning the delay in filing the appeal.

Accordingly, the application seeking condonation of 83 days' delay in filing the appeal as also the appeal are dismissed.

(S.S. Saron)
Judge

29.07.2015
'yogesh'/A.Kaundal

(Ramendra Jain)
Judge