

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1646 of 2014
Date of decision: 07.04.2015.

Jarnail Singh

.....Appellant

Versus

The Presiding Officer, Labour Court, Patiala and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jai Bhagwan, Advocate for the appellant.

Mr. Sachin Sharma, Advocate for respondent No.2.

S.S. SARON, J.

This appeal has been filed by Jarnail Singh appellant against the judgment and order dated 08.07.2014 passed by the learned Single Judge in CWP No.9749 of 1992.

The appellant was appointed as Assistant Secretary on temporary basis by the Bakhatgarh Cooperative Agricultural Service Society Ltd., Tehsil Barnala District Sangrur. He had put in ten months of service before his services were terminated due to abolition of the said post. The appellant filed an appeal against the abolition of the post of Assistant Secretary which was dismissed by the Assistant Registrar, Cooperative Society. The admitted position, therefore, is that the appellant was appointed against the post of Assistant Secretary, which was later on abolished by the respondent-Cooperative Society. However, no

compensation was paid to the appellant whereas he was entitled to fifteen days pay in lieu of compensation in terms of Section 25F of the Industrial Disputes Act, 1947 (Act-for short). It is also admitted case that the termination of the services of the petitioner (now appellant) on 06.11.1986 was without any notice, charge-sheet, inquiry or payment of compensation.

In the circumstances, the learned Labour Court, Patiala in its award dated 02.01.1992 held that the respondent-Cooperative Society was bound to pay compensation to the workman, although he could not be reinstated in service as the post of the Assistant Secretary had been abolished and was no more in existence. The workman was held entitled to compensation of fifteen days salary.

The appellant aggrieved against the award of the Labour Court filed CWP No.9749 of 1992 in this court which has been dismissed on 08.07.2014 holding that there was no error in the order passed by the Labour court.

On filing the present appeal, notice of motion was issued on 17.11.2014 only qua quantum of compensation awarded to the appellant.

We have heard learned counsel for the parties and with their assistance gone through the record.

The service of the appellant were terminated on 06.11.1986 as the post of Assistant Secretary of the respondent-Cooperative Society on which he was working had been abolished. However, he was not paid any compensation. The above said appellant had admittedly completed 240 days of

continuous service. Section 25F of the Act provides the conditions precedent to retrenchment of workmen. The same reads as under:-

“25F Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

In terms of the above, no workman employed in any industry who was in continuous service for not less than one year under an employer is to be retrenched by that employer except in the circumstances envisaged by clauses (a), (b) and (c) above. For continuous service of one year, in terms of Section 25 B (2)

(a) (ii) of the Act, a workman must have worked for 240 days in one year and not that he has to be in continuous service of one year. Section 25 B (2) (a) of the Act reads as under:-

“25B. Definition of continuous service.- For the purposes of this Chapter,--

(1) xxxx

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) xxxxxxxx”

The Supreme Court in the case of **Sur Enamel and Stamping Works Ltd. v. The Workmen**, AIR 1963 SC 1914 has held as follows:-

“On the plain terms of the section (S. 25-F) only a workman who has been in continuous service for not less than one year under an employer is

entitled to its benefit. 'Continuous Service' is defined in Section 2(eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman. What is meant by "one year of continuous service has been defined in Section 25B. Under this section a workman who during a period of twelve calendar months has actually worked in an industry for not less 240 days shall be deemed to have completed service in the industry.

The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days."

Therefore, on the strength of the above judgment it is to be ascertained whether a workman has completed 240

days of continuous service under an employee during a period of twelve calendar months.

The Supreme Court in **S.K. Verma v. Industrial Tribunal-cum-Labour Court, New Delhi**, AIR 1981 SC 422 observed that Act 36 of 1964 had drastically changed the position. Section 2(eee) had been repealed and Section 25-B(2) now begins with the clause "where a workman is not in continuous service.... for a period of one year". These changes brought about by Act 36 of 1964 appeared to be clearly designed to provide that a workman who had actually worked under the employer for not less than 240 days during a period of twelve months is to be deemed to have been in continuous service for a period of one year whether or not he had in fact been in such continuous service for a period of one year. It is enough that he had worked for 240 days in a period of 12 months and it is not necessary that he should have been in the service of the employer for one whole year.

Therefore, the appellant having completed 240 days of 'continuous service' in a year was liable to be paid compensation as a condition precedent to retrenchment although he was not entitled for reinstatement as the post had been abolished. The compensation is to be equivalent to 15 days average pay for every completed year of continuous service or any part thereof for excess of work.

In **State of Rajasthan v. Naresh Subey**, (2005) 12 SCC 251, the Labour Court had refused reinstatement to the

workman on the ground of non-availability of work. It was held that reinstatement was not the proper remedy. However, compensation of Rs.15000/- awarded by the Labour Court was increased to Rs.25000/-.

In the present case, the appellant has been awarded compensation of 15 days salary as his monthly salary was Rs.535/-. He was terminated on 06.11.1986 and he has undergone the travails of litigation for all these years. Therefore, we are of the view that ends of justice would be met if compensation of Rs.20,000/- is awarded to the appellant.

With the modification of the award by paying a compensation of sum of Rs.20,000/-, the appeal is disposed of.

The compensation shall be paid to the appellant as expeditiously as possible and preferably within a period of three months from receipt of copy of this order.

(S.S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

07.04.2015
A.Kaundal

Note: To be referred to reporter: Yes/No