

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.17 of 2014 (O&M)

Date of decision: 02.03.2015

The Sundh Co-operative Credit and Service

Society Ltd. Sundh, Tehsil Tauru.

.... Appellant.

Versus

Presiding Officer Industrial Tribunal-cum-

Labour Court-I, Gurgaon and another.

.... Respondents.

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

Present: Mr. S.S. Dalal, Advocate for the appellant.

None for respondent No. 1.

Mr. G.S. Sandhu, Advocate for respondent No.2.

S.S. Saron, J.

The Sundh Cooperative Credit and Service Society Ltd., Sundh has filed the present Letters Patent Appeal against the judgment and order dated 23.7.2013 passed by the learned Single Judge in CWP No.14682 of 2010 whereby the petition filed by respondent No.2 - workman claiming reinstatement in service which had been declined by an award dated 28.04.2010 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon has been allowed.

The respondent No.2 - Dinesh, who is a workman, was engaged as a 'chowkidar' on temporary basis on payment of Rs.1350/- per month by the appellant Co-operative Society on 01.03.1998. He joined as such on the said date. His services were terminated in

February 2001. According to him, the termination of his service was without giving him one month's notice or payment of salary in lieu thereof. Besides, he was not paid any retrenchment compensation and there had been an infraction of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act' - for short). He made a request for his reinstatement in service with back wages. This request was not acceded to by the appellant-Cooperative Society; therefore, he raised an industrial dispute by serving a demand notice under Section 2-A of the Act on 15.03.2004.

The matter was referred for conciliation. The conciliation proceedings, however, were unsuccessful. The dispute was accordingly referred under the Act to the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon on 17.08.2004.

The appellant - Cooperative Society appeared before the learned Labour Court and submitted its response. According to it the services of the respondent No.2 - workman had never been terminated and he himself had abandoned the job. It was, however, accepted by the appellant that the respondent No.2 - workman worked as a peon-cum-'chowkidar' on temporary basis. An amount of Rs.1350/- per month was paid to him for the period he worked from 23.03.1998 till 25.01.2001. Thereafter, according to the appellant, he remained absent and his absence was unauthorized, besides, without giving any information to the appellant-Cooperative Society. The demand notice served by him was also false and barred by time as the same had been submitted after three years of his absence. It was also submitted that the appellant - Sundh Cooperative Credit and Service Society Ltd.,

Sundh, Tehsil Tauru, District Gurgaon, stood amalgamated and merged with the Tauru Primary Agriculture Cooperative Society.

The learned Labour Court framed the following issues on 29.05.2008:-

1. Whether the services of workman were illegally terminated? If so, to what relief he is entitled to? OPW
2. Whether the reference is not maintainable in the present form and is barred by limitation? OPM
3. Relief.

The appellant-Cooperative Society was proceeded against *ex parte* before the learned Labour Court as none appeared on its behalf on 30.03.2010.

The learned Labour Court considered the issues that were framed. The respondent No. 2 - workman had appeared as PW-1 before the Labour Court and tendered in evidence his affidavit (Ex.PA) on the lines as detailed in the demand notice. He was cross-examined by the authorized representative for the Management. In his cross-examination, he submitted that he was getting salary of Rs.1350/- per month, but no appointment letter was issued to him. At the time of termination of his service, his salary was Rs.2200/- per month. He denied that he left the job on his own. There was no evidence to the contrary on record, nor were any arguments addressed in this regard.

The learned Labour Court in terms of its award dated 28.04.2010 held that the plea of abandonment in the absence of an inquiry and without following the mandate of Section 25-F of the Act could not be accepted. Besides, there was nothing on record to show as

to how the reference was not maintainable or as to how the reference was bad for non-joining of parties.

It was, however, held that as respondent No. 2 - workman was a temporary employee and a period of about ten years had already elapsed; therefore, no useful purpose would be served by directing his reinstatement. The termination though was bad but the appropriate relief, it was held, would be to compensate him. Keeping in view the length of his service, he was granted a sum of Rs.20,000/- as compensation instead of reinstatement in service. The compensation was ordered to be paid within one month from the date of award i.e. 28.04.2010 failing which he was held entitled to simple interest @7.5% (sic. - per annum).

Respondent No. 2 - workman, aggrieved against the said order of the Labour Court to the extent that he was not reinstated in service, filed Civil Writ Petition No.14682 of 2010 in this Court. The learned Single Judge considered the question as to whether the workman was entitled to the relief of reinstatement with continuity in service and back wages, once the violation of mandatory provisions of Section 25-F of the Act had been duly established.

After considering the question, it was held that the learned Labour Court had rightly recorded a finding to the effect that the mandatory provisions of Section 25-F of the Act stood violated in the present case. The termination of the services of respondent No. 2 - workman was held to be bad in the eyes of law. The appellant - Cooperative Society, it was observed, had not challenged the positive findings recorded by the learned Labour Court. It was held that the Court felt no hesitation to conclude that once respondent No. 2 -

workman had duly established on record that the appellant - Cooperative Society had clearly violated the mandatory provisions of Section 25-F of the Act, the learned Labour Court ought to have ordered his reinstatement with continuity of service. The relief regarding back wages, it was held, could have been suitably moulded. The learned Single Judge was of the considered view that the impugned award dated 28.04.2010 passed by the learned Labour Court could not be sustained and the same was ordered to be set aside. Besides, the petitioner was held entitled for reinstatement with continuity of service, however, with 50% back wages from the date of demand notice till the actual payment thereof. The appellant - Cooperative Society was directed to complete the exercise within a period of three months failing which the petitioner, it was held, shall be entitled to interest at the rate of 9% per annum on the amount of 50% back wages to be calculated from the date of demand notice till the date of actual payment thereof.

The appellant - Cooperative Society aggrieved against the said order has filed the present appeal. It is contended on behalf of the appellant that the learned Single Judge has not considered the fact that the appellant - Cooperative Society i.e. the Sundh Co-operative Credit and Service Society Ltd., Sundh is no more in existence and stands merged/amalgamated with the Tauru Primary Agriculture Co-operative Society Ltd., Tauru, District Mewat. Besides, reinstatement of respondent No. 2 - workman is not in public interest. It is submitted that respondent No. 2 -workman had himself abandoned the job. In any case, it is submitted that the dispute raised and the reference that was made being highly belated, the learned Labour Court rightly

awarded compensation only. Reliance has been placed on the judgments of the Supreme Court in B.S.N.L. v. Bhurumal, 2014 (3) Service Cases Today 49 and Bharat Sanchar Nigam Ltd. v. Man Singh, 2012 (2) Recent Services Judgment 143.

In response, learned counsel for respondent No.2 -workman submits that the leaned Single Judge has rightly ordered reinstatement of the workman in service with 50% back wages and there is no error in the order that has been passed. Therefore, the appeal is liable to be dismissed.

We have given our thoughtful consideration to the matter.

Respondent No.2 - workman worked with the appellant - Cooperative Society as a Peon-cum-'chowkidar' from 23.03.1998 till 25.01.2001. Thereafter, according to the appellant-Cooperative Society, respondent No.2 - workman absented himself from duty. Respondent No.2-workman, however, served a demand notice under Section 2-A of the Act on 15.03.2004. After reconciliation proceedings had remained unsuccessful, the matter was referred to the Labour Court for adjudication on 17.08.2004. The Presiding Officer, Industrial Tribunal-cum-Labour Court vide his award dated 28.04.2010 held that the termination of respondent No.2-workman was illegal; however, due to elapse of ten years, it was held that no useful purpose would be served by directing his reinstatement in service and instead awarded him a sum of Rs.20,000/- as compensation.

The question whether respondent No.2-workman is entitled for reinstatement in service is now the issue.

In B.S.N.L. v. Bhurumal (supra), the Supreme Court considered a case where the termination of a workman from service

was found to be illegal. It was held that the terminated worker should not be denied reinstatement unless there were some weighty reasons of adopting the course of grant of compensation instead of reinstatement in service. In such a case, reinstatement in service should be the rule and only in exceptional cases for the reasons to be stated in writing, such a relief could be denied. In the said case, the workman alleged that he had worked for fifteen years as a Lineman from 01.07.1987 till 27.04.2002 on daily wages basis. He while repairing the fault of a telephone suffered an electric shock on 17.11.2001 on account of which he sustained injuries. He was admitted in a hospital, but was not paid his salary from August 2001 to April 2002. He alleged that his services were illegally terminated w.e.f. 28.04.2002. The award in the said case was passed on 11.04.2011. It was held that the termination had taken place more than eleven years ago, besides, there was no direct evidence that the workman had worked for fifteen years and most of the documents related to two years i.e. 2001 and 2002. Therefore, the said facts, it was held, became relevant when it comes to giving the relief. Judicial notice was also taken of the fact that the need of the Lineman in the Telephone Department had been drastically reduced after the advancement of technology. For the said reasons, it was held that the ends of justice would be met by granting compensation to the workman in the said case in lieu of reinstatement in service.

In *Bharat Sanchar Nigam Ltd. v. Man Singh* (supra) the Supreme Court held that when an order of termination from service is set aside because of violation of Section 25-F of the Act, it was not necessary that the relief of reinstatement be also given as a matter of

right. In the said case, the workmen had worked with the appellant-Bharat Sanchar Nigam Ltd. as casual labourers on daily wages during the year 1984-85. Due to non-availability of work, their services were terminated in 1986. No notice or retrenchment compensations were given to them before their services were terminated. After about five years, the workmen raised an industrial dispute in the year 1991, which the 'appropriate government' referred to the Labour Court for adjudication. The Labour Court vide its award dated 27.05.2005 ordered reinstatement of the workmen on the same post which they were holding at the time of their termination from service. The award of reinstatement in service passed by the Labour Court was assailed by the department before the High Court by filing writ petitions, which were dismissed.

The Supreme Court held that it had in a catena of decisions clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Act may be set aside but an award of reinstatement in service should not be passed. It was held that the Supreme Court had distinguished between a daily wager who does not hold a post and a permanent employee. In view of the said legal position and the fact that the respondents-workmen were engaged as 'daily wagers', and they had merely worked for more than 240 days, in the considered view of the Supreme Court, the relief of reinstatement in service could not be said to be justified and instead, monetary compensation, it was held, would meet the ends of justice.

In the case of Incharge Officer and another v. Shankar Shetty, 2010 (4) SCT 261 the Supreme Court held that those cases where the termination had taken place many years ago, the recent

trend was to grant compensation in lieu of reinstatement. In the said case, this trend had been reiterated by referring to earlier judgments of the Supreme Court.

A reference may be made to the case of Jagbir Singh v. Haryana State Agriculture Mktg. Board, 2009 (3) Service Cases Today 790 wherein the Supreme Court observed that by catena of decisions in recent times, it had clearly laid down that an order of retrenchment passed in violation of Section 25-F of the Act although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman had completed 240 days of work in a year preceding the date of his termination particularly daily wages had not been found to be proper by the Supreme Court and instead compensation had been awarded.

Therefore, if the termination of an employee is found to be illegal, the relief of reinstatement with full back wages would ordinarily follow; however, in recent past, there had been a shift in the legal position and in a long line of cases, the Supreme Court had consistently taken the view that relief by way of reinstatement with back wages was not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee was in contravention of the prescribed procedure. Compensation instead of reinstatement it has been held would meet the ends of justice.

The judgment in B.S.N.L. v. Bhurumal (supra) was applied by the Supreme Court in Hari Nandan Prasad v. Food Corporation of India, (2014) 7 SCC 190. The Supreme Court in the said case considered the relief to be granted in a case where an illegal

termination of service of a workman was set aside being in violation of Section 25-F of the Act. It was held that the matters to be considered for grant of relief are the nature of post, duration of engagement, delay in raising industrial dispute, time period which had elapsed from time of termination, technical violation only of those whose services were terminated in a distant past and further where the termination was held to be illegal only on technical ground of not adhering to the provisions of Section 25-F of the Act. It was reiterated that relief of reinstatement with back wages was not automatic and may be wholly inappropriate in a given fact situation even though the termination of the employee was in contravention of the prescribed procedure. Compensation instead of reinstatement, it was held, would meet the ends of justice. An order of retrenchment passed in violation of Section 25-F of the Act although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman had completed 240 days of work in a year preceding the date of termination, particularly daily wages was not found to be proper by the Supreme Court and instead compensation was awarded.

In International Tractors Ltd., Hoshiarpur and another v. Presiding Officer, Labour Court, Jalandhar and another, 2011 (2) Recent Services Judgments 653 (P&H), the workman had worked with the petitioner-Management from 11.10.1996 to 01.07.1998. He delayed the seeking of a reference by an year. There was a serious dispute about his status as a workman. There was no record that he was a permanent employee. This Court held that these factors were not considered by the Labour Court to direct his reinstatement in

service. Compensation, it was held, would be equitable and just relief in the case instead of reinstatement in service.

The learned Single Judge in the present case for holding the respondent No. 2 – workman entitled to reinstatement in service, referred to the cases of Ramesh Kumar v. State of Haryana, 2010 (2) Recent Services Judgments 166 (SC); Harjinder Singh v. Punjab Warehousing Corporation, 2010 (2) Recent Services Judgments 113 (SC) and Devinder Singh v. Municipal Council, Sanaur, 2011 (3) Recent Services Judgments 341 (SC).

In Ramesh Kumar's case (supra) the workman was continuing in service at the time of passing the order by the Hon'ble Supreme Court. The workman was appointed as a 'Mali' at the residence of the Chief Minister. His services were terminated on 31.03.1993 without any notice and neither was any retrenchment compensation paid. After knowing that persons similarly appointed were allowed to continue or regularized by the Department, he sent a notice. The matter was referred to the Labour Court. It was pleaded by him that he had completed 240 days of service. The case of the Department was that he had not completed 240 days of service. His termination from service was set aside as it was as a matter of fact found that he had completed 240 days of service; besides, persons similarly situated had already been reinstated and their services had been regularized.

In Harjinder Singh's case (supra) the writ petition before the High Court, it was held, had been erroneously decided assuming that the workman in the said case was a daily wager employee, which was contrary to the averments contained in the plaint filed by the

workman. Besides, it was not the case of the Corporation even that he was employed on daily wages.

In Devinder Singh's case (supra), the High Court though did not find any jurisdictional infirmity in the award of the Labour Court and neither did it come to the conclusion that the same was vitiated by any error apparent on the face of the record, yet the same was set aside by assuming that his initial appointment/ engagement was contrary to law and that it would not be in public interest to approve the award of reinstatement after long lapse of time.

Therefore, the cases referred to by the learned Single Judge holding the respondent No. 2 – workman for reinstatement in his service, are clearly distinguishable. In the present case, the respondent No.2 - workman was working as a peon-cum-'chowkidar' on temporary basis and was being paid Rs.1350/- per month. He worked from 23.03.1998 till 25.01.2001. Thereafter, he remained absent, which can well be taken as an abandonment of service. However, the Department admittedly did not conduct any enquiry as regards his absence. Nevertheless, the respondent No.2-workman remained dormant till he issued a demand notice under Section 2-A of the Act on 15.03.2004, that is, after a period of three years. The matter was referred to the Labour Court on 17.08.2004 and it was decided by the Labour Court on 28.04.2010.

It is to be noticed that the respondent No.2-workman in the present case did not agitate his claim with regard to his alleged termination from service for a period of three years. Thereafter, now a period of almost fourteen years has elapsed, since he has no longer been in service. Besides, the respondent No. 2 – workman was a

temporary employee and was paid Rs.1350/- per month. The appellant-Sundh Cooperative Credit and Service Society is also now no longer in existence and it has merged/amalgamated with the Tauru Primary Agriculture Cooperative Society Ltd., Tauru, District Mewat. Therefore, at this stage, it would be iniquitous, besides, inexpedient to reinstate him in service. However, the ends of justice would be met if he is paid compensation of Rs.50,000/- with interest at the rate of 9 per cent per annum from the date of demand notice, that is, from 15.03.2004 till the date of payment.

The appeal is accordingly disposed of by setting aside the order of the learned Single Judge to the extent that the respondent No.2-workman had been held entitled for reinstatement with continuity of service and with 50 per cent back wages from the date of demand notice till actual payment and instead he shall be paid compensation of Rs.50,000/- with interest @9% per annum from the date of demand notice, that is, from 15.03.2004 till date of payment. There shall be no order as to costs.

(S.S. Saron)
Judge

(Surinder Gupta)
Judge

02.03.2015
amit/A.Kaundal

Whether to be referred to the reporter: Yes