

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA, CHANDIGARH

LPA No.344 of 2015 (O&M)
Date of decision : 15.05.2015

Krishan Kumar

.....Appellant

Versus

Chief Engineer, PWD (Public Health), Haryana,
Chandigarh and others

.....Respondents

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

Present:- Mr.S.S.Mor, Advocate
for the applicant/appellant.

S.S.SARON, J.

This appeal has been filed by the appellant-workman against the judgment and order dated 28.05.2014 passed by the learned Single Judge in CWP No.13741 of 2011. Along with the appeal, CM No.683-LPA of 2015 has been filed seeking condonation of 199 days' delay in filing the appeal.

We have heard learned counsel for the appellant and perused the record.

The appellant was employed by the Executive Engineer PWD (Public Health), Division No.1, Bhiwani (respondent No.2) as Beldar on delay wages at waterworks at Bamla/Phulpura in March, 2000. He continued with respondent No.2 without interruption till March, 2003. Thereafter, his services were terminated by respondent No.2. The said termination was

without notice, besides, he was not paid any retrenchment compensation. The appellant aggrieved against the same, submitted a demand notice dated 21.08.2005 (Annexure P-1) before respondent No.1. A claim statement was also filed by the appellant-workman. A reference of the same was made by the State Government to the Industrial Tribunal-cum-Labour Court, Hissar on 19.01.2007.

Respondents No.1 and 2 filed their written statement and the appellant filed his replication. The learned Industrial Tribunal-cum-Labour Court (respondent No.3) vide its award dated 21.05.2010, held that the appellant was engaged on daily wages and it was not shown that he had been appointed against any sanctioned post by the competent authority. However, it was held that he had completed 240 days of employment preceding 12 months from the date of his termination. Therefore, the termination of the appellant from service was held to be in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act'-for short). The appellant was awarded compensation of Rs.12,000/- which was payable by the respondents No.1 and 2.

The appellant aggrieved against the said award of the Industrial Tribunal-cum-Labour Court (respondent No.3) filed CWP No.13741 of 2011 in this Court. The learned Single Judge after due consideration of the matter enhanced the amount of

compensation payable to the appellant to a sum of Rs.75,000/- in all by modifying the award dated 21.05.2010 passed by the learned Industrial Tribunal-cum-Labour Court. The said amount was to be paid within two months from the date of receipt of certified copy of the order failing which it was to carry interest @9% per annum. Aggrieved against the same, the appellant has filed the present appeal.

Learned counsel for the appellant has contended that the compensation awarded by the learned Single Judge is grossly inadequate and higher compensation is liable to be awarded. It is submitted that the appellant is a poor workman and has been rendered without job. Therefore, he is entitled to more compensation.

We have given our thoughtful consideration to the matter.

The learned Single Judge while passing the impugned order, made a reference to the judgment of the Supreme Court in ***BSNL Vs. Bhurumal JT 2013(15) SC 611***, wherein it was held as follows:-

"23. it is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or

malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.” (Emphasis added).

Besides, recently, a Full Bench of this Court in ***Municipal Council, Dina Nagar, Tehsil and Distt. Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur 2015 (1) RSJ 642***, inter alia considered the question whether the failure to fill up the public posts in accordance with the relevant statutory Recruitment Rules disentitles a workman for reinstatement and whether a workman can be paid compensation for wrongful termination effected in violation of Section 25-F.

After consideration with reference to the case law it was held that keeping in view the recognized power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act, the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules. However, it was held that

the right of reinstatement, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

Therefore, the factors taken into consideration by the learned Single Judge in the facts and circumstances that the appellants had rendered service of 3 years, besides, he had raised the industrial dispute and had served a demand notice on 21.08.2005 after his services were terminated in March 2003 and his appointment was not against a regular sanctioned post awarded compensation of Rs.75,000/-. The same in our view is quite just and appropriate. There is nothing on record warranting to dislodge the conclusions reached at by the learned Single Judge. In the circumstances, we find no merit in the appeal and consequently, the appeal is dismissed.

Since the appeal has been dismissed on merits, the

question regarding delay in filing the appeal is only academic and the application seeking condonation of delay in filing the appeal is also dismissed.

(S.S.SARON)
JUDGE

15.05.2015
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(RAMENDRA JAIN)
JUDGE