

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.350 of 2015 (O&M)
Date of decision:20.04.2015

Jaibir Singh

.....Appellant

versus

The Executive Engineer and another

.... Respondents

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

Present: Mr. Yesh Paal Malik, Advocate for the appellant.

S.S. SARON, J.

The appeal has been filed by Jaibir Singh Beldar against the judgment and order dated 05.12.2014 passed by the learned Single Judge in CWP No.20244 of 2013 whereby the writ petition filed by the respondent Executive Engineer, Public Health Engineering, Division No.2, Rohtak has been allowed and the award dated 08.05.2013 (Annexure P-5) passed by the Industrial Tribunal-cum-Labour Court, Rohtak proforma respondent No.2 has been set aside. Along with the appeal CM No.687-LPA of 2015 has been filed seeking condonation of 36 days delay in filing the appeal.

The appellant was engaged as Beldar by the Executive Engineer, Public Health Engineering, Division No.2, Rohtak (respondent No.1) on 01.08.2002 on daily wages basis. He continued to work till 22.09.2003 when his services were terminated. According to the appellant, his services were terminated without any notice nor was he paid any wages in lieu of

notice and without payment of any retrenchment compensation. According to the employer i.e. Executive Engineer, Public Health Engineering, Division No.2, Rohtak (respondent No.1), the appellant had not rendered any service for a single day. The employer examined Bijender Singh, SDO, Sub Division No.2, Rohtak as MW-1. He produced attendance register Exhibits M1 to M13 in which presence of the workman had been marked for the period from 1.8.2002 till 22.9.2003. However, he also stated that the said entries had been manipulated by the appellant after taking the attendance register. It was also stated that the attendance register was countersigned by the concerned Junior Engineer on a regular basis. The Labour Court observed that though the Management had stated that FIR was got registered regarding theft of attendance register, but the same was not produced on record. The letter dated 6.1.2004 Exhibit M-14 which was written by the Management to the police regarding theft of the attendance register by the appellant was subsequent to the issuance of the demand notice by the appellant on 10.11.2003; besides, employer did not examine the concerned Water Pump Operator Satpal who was marking the presence of the employees. The Sub Divisional Engineer or Junior Engineer who were the supervising authorities and countersigning the attendance register were also not examined.

The learned Single Judge held that the allegations regarding the attendance register having been manipulated by the workman had rightly been discarded by the Labour Court and on valid and cogent reasoning. The workman had rendered continuous

service from 1.8.2002 to 22.9.2003. He had thus completed more than 240 days in the 12 preceding months from the date of his termination. He was neither served with any notice nor paid any wages in lieu of notice. It was held that the workman had worked only eight months as daily wager and has been granted relief of reinstatement of continuity of service on back wages.

The ratio of the judgment of the Supreme Court in **Assistant Engineer, Rajasthan Dev. Corp. and another v. Gitam Singh**, 2013 (2) SCT 30 and **B.S.N.L. v. Bhurumal**, (2014) 7 SCC 177 were referred to and it was held that the Labour Court had overlooked two vital aspects while directing reinstatement with continuity of service, that is, the workman had been engaged as Beldar on daily wages basis and his length of service was just a little more than one year. Applying the dictum in the two cases and also the decision of a Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur and another**, 2014 (4) SCT 514, it was held that the workman could not have been granted the relief of reinstatement and rather he was entitled to compensation of Rs.1 lac in lieu thereof.

Learned counsel for the appellant has referred to the decision of this Court in '**District Transport Officer, Panipat v. Rajesh and another**' **LPA No.1282 of 2014** decided on 27.02.2015 to contend that a Division Bench of this Court held that where the termination of a workman is contrary to the provisions of Section 25F of the Industrial Disputes Act, 1947 (Act-for short), the

workman is entitled to reinstatement in service.

We have given our thoughtful consideration to the matter. As already noticed, the appellant was engaged on daily wages basis, which has been so held by the learned Labour Court as also the learned Single Judge. In the case of a daily wages employee, the Supreme Court in the two aforesaid referred decisions in Assistant Engineer, Rajasthan Dev. Corp. and another v. Gitam Singh (supra) and B.S.N.L. v. Bhurumal (supra) has held that a workman on a daily wages basis is not normally to be granted the relief of reinstatement and rather is entitled to compensation. A Full Bench of this Court Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur and another (supra) has held that in case of a daily wager whose termination has been found to be in violation of Section 25F of the Act, the Labour Court while awarding relief would have to take into consideration various aspects like nature of appointment, availability of post, availability of work, whether appointment was as per rules and statutory provisions, length of service as also delay in having raised the industrial dispute.

In the present case, the appellant was engaged on daily wages basis as a Beldar. He had worked for just a little more than one year. Therefore, the learned Single Judge rightly held that he was entitled to Rs.1 lac as compensation and not to reinstatement in service. The case of District Transport Officer, Panipat v. Rajesh and another (supra) referred to by the learned counsel for the appellant is a case in which the workman was appointed on part

time – 89 days basis and he was given 2-3 days' break during the period of his employment i.e. from 20.08.2002 till 13.12.2004. He was being given regular pay scale and usual allowances during service. The ratio of the judgment in the said case would not be applicable to the present case where the appellant was working on daily wages basis and not on part time basis.

In the circumstances, there is no merit in the appeal and the same is accordingly 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

(SURINDER GUPTA)
JUDGE

20.04.2015
A.Kaundal