

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGAH**

LPA No.354 of 2015 (O&M)

Date of decision: 21.04.2015.

Sultan Singh

..... Appellant.

Versus

State of Haryana and another

..... Respondents.

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

Present: Mr. Ramesh Goyat, Advocate, for the appellant.

S.S. Saron, J.

The Letters Patent Appeal has been filed by the appellant against the order dated 17.11.2014 passed by the learned Single Judge in CWP No.2370 of 2013 vide which the award dated 30.09.2010 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat ('Labour Court' - for short) (respondent No.2) ordering reinstatement of the appellant - workman with continuity of service and 50% back wages has been substituted for payment of compensation of Rs.3,00,000/- (Rs. Three lacs only). A further prayer has been made for upholding the award dated 30.09.2010 passed by the learned Labour Court (respondent No.2).

Along with the appeal, civil miscellaneous application, i.e. CM No.690-LPA of 2015, has been filed seeking condonation of 14 days' delay in filing the appeal.

We have heard learned counsel for the appellant and with his assistance gone through the records of the case.

The appellant - workman was engaged as a Mali-cum-Chowkidar by the Executive Engineer in the Department of Public Health, Division No.2, Sonapat, earlier known as Public Works Department, Public Health, Division No.2, Sonapat. According to respondent No.1-State through Executive Engineer, PWD Public Health, D&P Division No.2, Sonapat (now Public Health Engineering Division No.2), the appellant was engaged on daily wages and on temporary basis on 01.11.1995. He worked with breaks with the Management upto the date of his termination on 31.03.1997 with gaps from 01.01.1996 to 15.01.1996 and 21.08.1996 to 31.08.1996. Due to financial crunch in the respondent department, the appellant was retrenched from service in pursuance of notice dated 31.03.1997 (Annexure P1). He was requested to collect an amount of Rs.2165/- as retrenchment compensation along with wages in lieu of notice as per provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act' - for short) from the office of the Sub Divisional Engineer, Public Health Engineering, Sub Division No.1, Ganaur on any working day. In the said notice (Annexure P1), it was mentioned that the services of the appellant had been retrenched on the basis of 'last come first go' rule as prescribed in Section 25-G of the Act. He was informed that no person junior to him had been retained in service on daily wages in the Public Health Engineering, Sub Division No.1, Ganaur; besides, in case of any future vacancy and the department considers to fill the post in the cadre, his case for re-employment shall be considered in terms of Section 25-H of the Act. The address of the appellant for correspondence was also noted.

The appellant then after a period of 5½ years, i.e. on 26.06.2002, served a demand notice (Annexure P2) on the respondent

department under Section 2-A of the Act. He alleged that he had worked as Mali-cum-Chowkidar from 01.11.1995 to 31.03.1997 continuously under the Executive Engineer, Public Works Department (Public Health), Division No.2, Sonapat. He had been receiving Rs.1548.60 paise per month as salary. His behaviour was very good during his service. He stated that the termination of his service/retrenchment was made orally. He was informed that the termination was due to financial problems. The retrenchment, it was submitted, was made on the basis of an order dated 16.08.1996 of the Engineer-in-Chief, PWD, Public Health Branch, Chandigarh which could not be made on this ground. It was stated that at the time of termination of his service, the provisions of Section 25-H of the Act had not been complied with. Hence, his retrenchment was illegal. Besides, his seniority was not considered at the time of retrenchment and after his retrenchment other workmen had been appointed. The nature of the job was permanent. Therefore, he was entitled to reinstatement in service with wages. Besides, many workers had been reinstated. The appellant filed his written claim statement dated 23.07.2003 (Annexure P3).

The Executive Engineer, PWD Public Health Division No.2, Sonapat filed its written statement dated 20.05.2004 (Annexure P4). It was stated that the workman (appellant) was engaged purely on temporary basis for a short period on muster rolls in November 1995 w.e.f. 01.11.1995 on daily wages as per the rates fixed from time to time by the Deputy Commissioner. It is stated that it was wrongly alleged by the workman that he was engaged on a vacant post. He worked with breaks with the management till his termination i.e. 31.03.1997. He worked with gaps from

01.01.1996 to 15.01.1996 and 21.08.1996 to 31.08.1996. Notice was given to the workman and he was offered to collect the retrenchment compensation from the office, which he did not collect. Due to financial reasons observed by the State Government of Haryana, PWD P.H. Branch, Chandigarh, vide memo dated 16.08.1996, some daily wages staff was required to be retrenched. In compliance with the directions issued by the competent authority as mentioned in the aforesaid memo, the management/respondent department issued a show cause notice to the appellant/workman, which was prepared on 'last come first go' basis strictly in accordance with the provisions contained in Sections 25-F and 25-G of the Act. It is stated that the appellant/workman had not completed 240 days of continuous service in any calendar year. Besides, no person, after the retrenchment of the appellant/workman or junior to him, had been kept in service with the management. It is also stated that the PWD, Public Health Department, is not covered under the provisions of the Act. The claim filed by the appellant/workman, it is stated, was time barred inasmuch as it was filed after a gap of five years.

Replication (Annexure P-5) was filed by the appellant/workman. It was stated that the work of the appellant/workman was of permanent nature. He was not given any notice of his retrenchment but it was orally said that his services were terminated. The respondent department had not got any approval of the government for his retrenchment. He had served for more than 240 days. It was further stated that the respondent department fell within the definition of 'industry'. The appellant/workman it was claimed was to get the pay of the leave period. Therefore, it was prayed that the application of the appellant/workman be

accepted and he be reinstated on regular basis while continuing with his previous service along with pay of leave period.

The dispute raised by the appellant/workman was referred by the State Government in terms of Section 10 (1) (c) of the Act to the learned Labour Court. The reference was to the effect:-

“Whether the termination of services of workman Shri Sultan Singh is legal and justified or not? If not so, to what relief he is entitled?”

The appellant stated that he had continuously worked with the respondent department on the post of Mali/Sweeper (sic. - Mali-cum-Chowkidar) and he was drawing monthly salary of Rs.1548.60 paise. He was terminated/retrenched from service by the management orally on 01.04.1997 (sic. - 31.03.1997), which it was alleged was in violation of Section 25-F of the Act. According to the appellant, no seniority list was ever provided to him at the time of his termination though he was a permanent employee and another employee junior to him had been engaged against his post after termination/retrenchment of his services.

The respondent department contested the claim alleging that the workman had not worked for 240 days in any calendar year; besides, Public Works Department was not an ‘industry’. It is stated that the appellant/workman used to work with breaks on daily wages basis. There were gaps in his service for the period from 01.01.1996 to 15.01.1996 and 21.08.1996 to 31.08.1996 on daily wages basis. He never worked continuously or regularly with the respondent department for 240 days in a calendar year. His engagement was purely on daily wages/casual labour at the rates fixed by the Labour Commissioner-cum-Deputy Commissioner,

Sonepat from time to time. He was retrenched from service as per order of the Engineer-in-Chief, Haryana, PWD Public Health Branch, Chandigarh dated 16.08.1996. His retrenchment was made after compliance with the provisions of Section 25-F of the Act. It is also stated that the appellant/workman was offered to collect the retirement compensation from the office on any working day, but he did not collect the same. There was no seniority list of daily wagers/casual workers in the department. No junior to the appellant had been engaged.

The learned Labour Court considered the contentions raised by the parties. It was held that in the present case, if Sundays were to be counted as working days, which were liable to be counted in view of a Division Bench decision of this Court in Sudeep Singh Mann v. Presiding Officer, Labour Court, Chandigarh and another, 1989 (1) RSJ 76, then the working days of the appellant/workman came to more than 240 days in a calendar year. It was also observed that a witness of the respondent management had admitted the fact that the government had issued directions that the labourers, who had completed more than 240 days in service, be retrenched after serving retrenchment notice. The respondent department complying with the said directions had retrenched the appellant/workman after serving notice. This fact also, it was said, proved that the respondent management had not shown full attendance of the appellant/workman in Ex.M1 and the appellant/workman had worked for more than 240 days; besides, no notice pay was given to him at the time when the notice was given. According to the learned Labour Court, the respondent department had violated the provisions of Section 25-F of the Act. Therefore, the retrenchment was held to be invalid as retrenchment

compensation was not given. The reference was decided in favour of the appellant/workman holding that he was entitled to reinstatement with continuity of service and 50% back wages from the date of demand notice, i.e. 26.06.2002, at the last drawn salary of Rs.1548.60 paise.

The respondent department aggrieved against the award dated 30.09.2010 passed by the learned Labour Court filed a petition in this Court.

A learned Single Judge of this Court considered the objections raised by the respondent department regarding delay in serving the demand notice. It was held that there was no limitation prescribed for reference of disputes to an Industrial Tribunal under the Act although disputes should be referred expeditiously and soon after they had arisen and after conciliation proceedings had failed. It was further held that delay in such matters would be fatal if the delay had resulted in the material evidence relevant to the adjudication being lost and rendered unavailable. The test would be as to whether the industrial dispute was in existence on the date of reference for adjudication. The retrenchment order in the present case is dated 31.03.1997 and the date of issuance of the demand notice is 26.06.2002. A reference was made to para No.7 of the demand notice (Annexure P2) wherein it is mentioned by the appellant/workman that at the time of his termination of service it was orally said that as per government instructions, the services of all workers similar to him had been terminated. Besides, in case any appointment of workers was to be made in future, then the appellant shall be taken on work. He was asked to remain in touch with the office. It is stated that the appellant/workman remained in touch with the office, but he was not taken on duty. It had,

however, come to his notice that work had been taken from new workers on 89 days' basis. He had come to know then that many workers had been reinstated after decision of their cases by the Court in their favour. However, when he raised a demand to take him on work, then he was informed that those workers would be taken on duty whose cases had been decided by the Court in their favour. It is stated that due to instigation (sic. - assurance) by the management, the appellant/workman could not file his case in time. He was a villager and due to unawareness of law, no action could be taken in time. A person giving legal advice had then advised him to file a case. Due to the said reason, delay had occurred in filing the case which was liable to be condoned.

The learned Labour Court, it was observed by the learned Single Judge, held that in the light of such averments, even though, it may be held that there had been certain delay on the part of the appellant/workman but the same could not be construed as fatal and the employee could not be solely blamed for such delay. Accordingly, the learned Labour Court held that in the facts and circumstances of the present case, the appellant/workman could not be non-suited merely for the fact that demand notice was issued after a period of five years approximately from the date of his retrenchment notice. It was further said that it had gone uncontroverted that the retrenchment notice dated 31.03.1997 had been served on the appellant/workman which also contained an offer to collect retrenchment compensation of Rs.2165/-. As such, it was said that no infirmity was found with the view taken by the learned Labour Court regarding the appellant/workman having completed more than 240 days in the preceding twelve calendar months.

The submission raised by the learned State counsel on behalf of the State/employer to the effect that substantial compliance of the provisions of Section 25-F of the Act had been made upon an offer having been made for collecting the retirement compensation was found to be without merit. Reliance was placed on M/s National Iron and Steel Company Ltd. and others v. State of West Bengal and another, AIR 1967 Supreme Court 1206. In the said case, the retrenchment notice was dated 15.11.1958 and it was to the effect that the services of the addressee were terminated w.e.f. 17.11.1958 and that he would get one month's wages in lieu of notice of termination of his service. He was asked to collect his dues from the cash office on 20.11.1958 or thereafter during working hours. It was held that manifestly Section 25-F of the Act had not been complied with under which it was incumbent upon the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That was to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect the dues afterwards. In this view of the matter, in the present case, the finding of the learned Labour Court as regards non-compliance of Section 25-F of the Act in the case of the appellant/workman was upheld.

The crucial question that was, however, considered was as to whether the appellant/workman, who had worked admittedly for a period of 17 months as a daily wager and his termination having been held to be in contravention of Section 25-F of the Act, was entitled to the relief of reinstatement with continuity of service. In this regard, reliance was placed on the Supreme Court decisions in Assistant Engineer, Rajasthan Development Corporation and another v. Gitam Singh, 2013 (2) SCT 30

and B.S.N.L. v. Bhurumal, 2014 (3) S.C.T. 49; besides, on a Division Bench decision of this Court in B.P.S. Mahila Vishwavidyalaya v. Mukesh Kumar and others, LPA No.890 of 2014 decided on 01.07.2014. The appellant/workman, it was noticed, was engaged on daily wage basis. His engagement was not in pursuance to any regular recruitment process having been followed. It was his case that he had worked from 01.11.1995 to 31.03.1997, i.e. for a period of seventeen months. There was even a delay in raising the industrial dispute as the demand notice had been issued only on 26.06.2002 as against retrenchment notice dated 31.03.1997. Such relevant factors, it was held, had been overlooked by the learned Labour Court while exercising its judicial discretion and holding the workman entitled to reinstatement with continuity of service along with 50% back wages. Applying the dictum in Gitam Singh's case (supra) and Bhurumal's case (supra), the learned Single Judge was of the considered view that the relief to which the appellant/workman was entitled to on account of non-compliance of the provisions of Section 25-F of the Act in the facts and circumstances was that of compensation and not of reinstatement in service. The petition was partly allowed and the award dated 30.09.2010 (Annexure P6) was modified by holding that the appellant/workman would not be entitled to reinstatement in service but was awarded *lump sum* compensation of Rs.3,00,000/- to be paid within a period of two months and failing which he would be entitled to claim interest @8% per annum till such time the payment was not released.

The judgments of Hon'ble the Supreme Court in Gitam Singh's case (supra) and Bhurumal's case (supra) as also of this Court in B.P.S. Mahila Vishwavidyalaya v. Mukesh Kumar and others (supra) do

provide for payment of compensation in lieu of reinstatement in appropriate case.

In Gitam Singh's case (supra), Hon'ble the Supreme Court 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.

In Bhurumal's case (supra), 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, the Supreme Court had been taking a consistent view 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.

In B.P.S. Mahila Vishwavidyalaya v. Mukesh Kumar (supra), a Division Bench of this Court held that a daily wager, who had worked only for a period of 1½ years and there being non-compliance of Section 25-F of the Act, the proper relief would be to grant compensation instead of reinstatement. Accordingly, an amount of Rs.3,00,000/- (Rs. Three lacs only) was awarded as compensation to the workman.

In State of M.P. and others v. Lalit Kumar Verma, (2007) 1 SCC 575, the respondent was not appointed in terms of the statutory rules. He was not entitled to any regular scale of pay attached to any post. It was held that ordinarily he could not have been directed to be regularized in service having regard to the Constitution Bench decision in Secretary, State of Karnataka v. Uma Devi and others, (2006) 5 SCC 1. It was held that the original appointment of third respondent being illegal and not irregular, the case would not come within the exception carved out by the Constitution Bench in para 53 of Uma Devi's case (supra). Hence, the Labour Court/Industrial Tribunal as also the High Court, it was held, were not correct in directing regularisation of service of the respondent. However, keeping in view the peculiar facts and circumstances of the case the interest of justice, it was held would be sub-served if it was directed that any benefit which had already been given to the respondent shall not be recovered; besides, he be paid a sum of Rs.1,50,000/- towards compensation.

In the present case, the appellant was admittedly engaged on daily wage basis. He had worked with intermittent breaks from time to time during the period from November 1995 till his retrenchment on 31.03.1997. Besides, it is not the case of the appellant-workman that he was appointed on regular basis and against a regular post. He was in fact

engaged on daily wage basis. As regards the fact that has weighed with the learned Labour Court that the retrenchment compensation had not been paid to him, it is to be noticed that in the retrenchment order dated 31.03.1997 (Annexure P1), it was stated in paras No. 2 and 3 as follows:-

“2. You are requested to collect amount of Rs.2165/- as the retrenchment compensation along with wages in lieu of the notice as per Clause 25-F (sic. Section 25-F) of Industrial Dispute Act from the office of the Sub Divisional Engineer, Public Health Engineering Sub Division No.1, Ganaur on any working day.

3. Your services has been retrenched on the basis of “last come first go” rules as prescribed in Clause 25-G of Industrial Dispute Act. You are informed that no person junior to you have been retained in service as daily wages in Public Health Engineering Sub Division No. 1, Ganaur. In case of any future vacancy and Department consider to fill up post in your cadre, your case for re-employment shall be considered as per Section 25-H of Industrial Dispute Act, at the time of proposal of any employment in your cadre by this office. Your address as per record is:-

Sh. Sultan Singh son of Sh. Rameshwar, Vill. &

P.O. Ahir Majra, Tehsil Ganaur, District Sonipat.

Any change in address should be promptly communicated to this office.”

A perusal of the above shows that the appellant was requested to collect the amount of Rs.2165/- as retrenchment compensation along with wages in lieu of notice as per Section 25-F of the Act from the office of Sub Divisional Engineer, Public Health, Engineering Sub Division No.1, Ganaur on any working day. However, he on his own failed to collect the said amount. He was also informed that his services had been retrenched on the basis of “last come first go” rule in terms of Section 25-G of the Act. Besides, he was informed that his case for re-employment shall be considered as per Section 25-H of the Act at the time of proposal of any employment in his cadre by the office. His address was also retained by the office.

The learned Labour Court held that there had been violation of the provisions of Section 25-F of the Act, which provides for the conditions precedent to retrenchment of workmen.

In Pramod Jha v. State of Bihar, (2003) 4 SCC 619, it was held that a bare reading of Section 25-F of the Act shows that retrenchment within the meaning of Section 2 (oo) of the Act must satisfy the following requirements:

- (i) that the workman has been given one month's notice: (a) in writing, and (b) indicating the reasons for retrenchment;
- (ii) that the retrenchment must take effect after the expiry of the period of notice i.e. one month or else the workman should be paid in lieu of such notice, wages for the period of the notice;

- (iii) that at the time of retrenchment the worker has been paid compensation equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (iv) that the notice in the prescribed manner is served on the appropriate Government or on the specified authority as notified.

It was further said that the underlying object of Section 25-F was twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but was also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F, it was held, nowhere speaks of retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment had taken effect, it was said, would vitiate the retrenchment and non compliance with the mandatory provision, which has

a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

It may be noticed that a workman who is to be retrenched from service must be paid retrenchment compensation at the time of his retrenchment, or before. Section 25-F of the Act does not speak of retrenchment compensation being paid or tendered to the worker along with one month's notice. In fact clause (b) of Section 25-F expressly provides for the payment of compensation being made at the time of retrenchment. This has been held by implication that it would be permissible to pay the same before retrenchment. However, payment or tender of compensation when the retrenchment had taken effect, would vitiate the retrenchment and non compliance with the mandatory provision, would result in nullifying the retrenchment.

The compensation, in the present case, had been offered to be paid to the appellant/workman at the time of his retrenchment inasmuch as he was requested to collect the retrenchment compensation along with wages in lieu of notice from the office of the Sub Divisional Engineer, Public Health Engineering, Sub Division No.1, Ganaur on any working day. In *M/s National Iron and Steel Co. Ltd. v. the State of West Bengal* (supra), the notice terminating the services of the workman was issued on 15.11.1958 whereby the services were terminated on 17.11.1958. The workman was asked to collect his dues from the cash office on 20.11.1958 or thereafter during working hours. The dues in this manner were asked to be collected after three days of the termination of his services. In the said circumstances, it was held that Section 25-F had not been complied with under which it was incumbent upon the employee to pay the workman the

wages for the period of the notice in lieu of the notice. It was said that if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards.

In the present case, however, there is no such restriction in the termination order inasmuch as the workman was asked to collect the retrenchment compensation along with wages in lieu of notice from the office of Sub Divisional Engineer, Public Health Engineering Sub Division No.1, Ganaur on any working day which would include the date 31.03.1997 when the notice was served. In the circumstances, there has in any case been some compliance with the provisions of Section 25-F of the Act and it cannot said to be a case of total non-compliance. In the circumstances, the learned Single Judge has taken a reasonable view of payment of compensation in lieu of reinstatement.

Therefore, we find no merit in the appeal. Accordingly, the appeal is dismissed. Since the appeal has been dismissed on merit, the question of delay in filing the appeal is only academic and, accordingly, the civil miscellaneous application seeking condonation of delay in filing the appeal is also dismissed.

(S.S. SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

21.04.2015
Ramesh/A.Kaundal