

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.415 of 2015 (O&M)

Date of Decision:21.04.2015

State of Punjab and others

...Appellants.

Versus

Gurmail Singh

...Respondent.

Coram: Hon'ble Mr. Justice S.S. Saron
Hon'ble Mr. Justice Ramendra Jain

Present: Mr. Suvir Sehgal, Addl. AG, Punjab
for the appellants-State.

S.S. Saron, J.

This Letters Patent Appeal has been filed by the appellants-State against the judgment and order dated 25.11.2014 passed by the learned Single Judge in CWP No.23663 of 2014 whereby the petition filed by the respondent-Gurmail Singh seeking quashing part of the award dated 22.12.2011 (Annexure P-3) passed by the learned Labour Court, Patiala whereby relief of reinstatement with all consequential benefits had been declined and only compensation of Rs.15,000/- had been awarded, has been allowed. The respondent has been reinstated with continuity of service; besides, back wages limited to 50% have been granted considering the fact that he had not actually worked with the appellants for all these years and possibly would have been eking out a livelihood for himself

The respondent-Gurmail Singh joined service as a Chowkidar with the Sub Divisional Officer, Lining Sub Division No.5, Barnala on 01.04.1986. He worked continuously till 31.08.1987 when his services were terminated without any notice

or charge sheet. He raised an industrial dispute which was referred for adjudication to the learned Labour Court, Patiala. The Labour Court vide its award dated 25.10.1994 (Annexure P-1) reinstated him with continuity of service but without back wages. The respondent was accordingly taken back in service. His services were, however, again terminated from 08.12.1995. The respondent aggrieved by his termination from service, served a demand notice dated 28.11.1996. The dispute was referred for adjudication to the Industrial Tribunal/Labour Court, Patiala. In terms of an *ex parte* award dated 10.05.2001, he was reinstated with continuity of service and full back wages. The management in view of the award being *ex parte*, filed an application for setting aside the same, which was dismissed on 30.05.2005. The appellant State then filed CWP No.14770 of 2005 in this Court, which was allowed on 09.04.2008 (Annexure P-2) and the matter was remanded to the Labour Court for fresh decision on merit.

The learned Labour Court then adjudicated the matter and vide its award dated 22.12.2011 (Annexure P-3) held that the retrenchment of the respondent workman was void ab initio and his services had been terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act' - for short) in an illegal manner by the management. However, instead of ordering his reinstatement in service an amount of Rs.15,000/- was awarded as compensation.

The respondent aggrieved against his being not reinstated in service filed CWP No.23663 of 2012 which, as already noticed, has been allowed by the learned Single Judge vide its impugned order dated 25.11.2014, which is assailed in the present appeal.

Learned counsel appearing for the appellants submits that though the learned Single Judge had affirmed the observations of non-compliance with the provisions of Section 25-F of the Act as held by the learned Tribunal, but committed an error in setting aside part of the award whereby the respondent workman was awarded Rs.15,000/- as compensation in lieu of reinstatement in service. The learned Single Judge, it is submitted, rightly held that the respondent workman was engaged as a Chowkidar on temporary basis. It is submitted that the department of the appellants is governed by its own rules and regulations and the respondent was not a regular employee of the department. Such types of ad hoc/temporary appointments being contrary to the provisions of Articles 14 and 16 of the Constitution of India are illegal. A reference has been made to the case of Secretary, State of Karnataka v. Umadevi and others, (2006) 4 SCC 1 to contend that when a relief is sought, the Court has necessarily to ask itself whether the person before it had any legal right to be enforced; besides, reliance is also placed on Haryana State Electronics Development Corporation Ltd. v. Mamni, (2006) 9 SCC 434 wherein it has been held that where service is terminated without complying with the conditions laid down in Section 25-F of the Act, the payment of compensation instead of reinstatement would be an adequate relief. A further reference has been made to the case of Senior Superintendent Telepgraph (Traffic) Bhopal v. Santosh Kumar Seal and others, 2010 (3) SLR 309 wherein it is held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or in contravention of prescribed procedure. Therefore, it is submitted

that the learned Single Judge erred in ordering reinstatement of the respondent workman instead of confining the relief to the grant of compensation only.

We have given our thoughtful consideration to the matter.

It is to be noticed that initially the services of the respondent were terminated on 31.08.1987. He was ordered to be reinstated in service vide award dated 25.10.1994 passed by the learned Labour Court, Patiala. At that time the respondent had put in one year and five months service as a work charge Chowkidar. He was drawing Rs.677.50 per month as wages on 31.08.1987, when his services were terminated. The Labour Court, Patiala vide its award dated 25.10.1994 ordered reinstatement in service of the respondent with continuity of service but without back wages as the demand notice that he served was filed four years and four months after his termination. Thereafter, the services of the respondent-workman were again terminated from 08.12.1995. Aggrieved by the illegal termination from service, he served a demand noticed dated 28.11.1996.

The dispute was referred to the Industrial Tribunal/Labour Court, Patiala for adjudication. The learned Tribunal by an ex parte award dated 10.05.2001 ordered his reinstatement with continuity of service and full back wages. An application was filed by the appellants for setting aside the ex parte award, which was dismissed on 30.05.2005. The appellants then filed CWP No.14770 of 2005 in this Court and the matter was remanded to the Labour Court, Patiala for fresh decision vide order dated 09.04.2008.

The learned Labour Court then proceeded to adjudicate the matter and framed the following issues:-

"1. Whether the services of the workman were terminated illegally by the respondent management? OPW

2. Whether the reference is not maintainable in the light of preliminary objection taken by the respondent management in its written statement? OPM

3. Relief."

The learned Labour Court vide its award dated 22.12.2011 (Annexure P-3) decided issue No.1 in favour of the respondent workman holding that his retrenchment was void ab initio and his services had been terminated in violation of the provisions of Section 25-F of the Act in an illegal manner by the management. Issue No.2 was also decided against the management. It was held that the Industrial Tribunal had the jurisdiction to adjudicate on the present reference as the same had been made by the 'appropriate government.' While granting relief, it was observed that Gurmail Singh respondent was not a regular employee of the respondent department and proper procedure was not followed while employing him. Non-compliance of the provisions of Section 25-F of the Act, it was observed, may lead to grant of relief of reinstatement with full back wages and continuity in service of the retrenched workman but the same would not mean that such relief would be granted automatically or as a matter of course. It was observed that the respondent had worked for nine years and he had served a demand notice without any delay after termination of his services, therefore, the ends of justice would be met by payment of Rs.15,000/- as compensation

to him.

The learned Single Judge in his impugned order observed that the Tribunal had taken an abjectly erroneous view by limiting the compensation to Rs.15,000/-. At the time of grant of relief the Courts were to see the intending circumstances to determine the nature and extent of the grievance of the claimant. The respondent workman had been struggling for his employment since 1986. His services were ostensibly terminated only on the ground that Barnala Sub Division had been attached to Ludhiana Sub Division with no work left at Barnala. This stand of the appellants stood negated absolutely when reinstatement was offered to the workman at Barnala pursuant to the award of the Labour Court. There was thus no occasion to terminate the services of the respondent on this ground again and that too without complying with the provisions of Section 25-F of the Act. The work and conduct of the respondent was not under cloud. Therefore, the respondent had been grossly prejudiced. Having put in nine years of service by virtue of the award of the Labour Court which granted him continuity of service, it was observed that the appellants could not say that he had merely put in few years of service. Even though automatic reinstatement was not an option of the Labour Court as also this Court but considering the fact that the respondent had been struggling for employment as against the appellants who had stubbornly been insisting on denying this benefit to him, the learned Single Judge was of the view that he deserved reinstatement with continuity of service. The back wages were, however, limited to 50% considering the fact that the respondent had not actually worked with the

appellants for all these years and possibly would have been eking out a livelihood for himself.

The learned Single Judge, therefore, observed that the respondent workman had been struggling for his employment since 1986. His services were ostensibly terminated only on the ground that Barnala Sub Division had been attached to Ludhiana Sub Division with no work left at Barnala. This stand of the appellants stood negated absolutely when reinstatement was offered to the workman at Barnala pursuant to the award of the Labour Court.

Reinstatement in service in case of violation of the provisions of Section 25-F of the Act is indeed not normally to be automatic or as a matter of course but nevertheless each case is to be determined on the basis of its own facts and circumstances. The case of Secretary, State of Karnataka v. Umadevi (supra) the observations of the Supreme Court as to whether the person before it had any legal right to be enforced is indeed necessarily to be asked. However, the said observations were in the context that the employees in the said case were seeking permanent employment and the Supreme Court held that it cannot be said that the employees had been able to establish a legal right to be made permanent even though they had never been appointed in terms of relevant rules or in adherence of Articles 14 and 16 of the Constitution. In Haryana State Electronics Development Corporation Ltd. v. Mamni (supra), an ad hoc appointee in a temporary post had completed the length of service postulated by Section 25-F of the Act. Her services were terminated without complying with the conditions laid down in that Section. An

advertisement was issued for filling up the post but she never applied. Besides, fourteen long years had lapsed after the termination of the ad hoc appointee. Moreover, there was no material on record to show that she had not been working during that period. Therefore, instead of reinstatement with full back wages compensation quantified as Rs.25000/- was directed to be paid. As such it was in the context of the said facts and circumstances that instead of reinstatement in service, compensation was awarded. In Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal (supra), the workmen were engaged as daily wages about twenty five years back and they worked for two or three years; therefore, instead of relief of reinstatement and back wages to them was held to be not justified even their services were retrenched without following the mandatory provisions of Section 25-F of the Act.

The present case as has already been noticed relates to entirely different circumstances which the learned Single Judge has duly delineated upon and found them to be somewhat extraordinary and compelling, with which we fully concur. Besides, even though the mode and manner of appointment, nature of employment, length of service are to be kept in view but the ground on which the termination has been set aside is equally important. It is to be noticed that there is no cloud of any kind attributed to the respondent workman and his services were sought to be dispensed with only on the ground that Barnala Sub Division had been attached to Ludhiana Sub Division with no work left at Barnala. This stand of the appellants, as held by the learned Single Judge, stood negated absolutely when

reinstatement was offered to the workman at Barnala pursuant to the earlier award of the Labour Court.

The Supreme Court in Ajay Pal Singh v. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014 (Arising out of SLP (C) No. 18130 of 2010) decided on 09.07.2014, noticed that the High Court in its impugned judgment had made observations to the effect that several judgments had been delivered by the Hon'ble Supreme Court holding that reinstatement of a workman to a public post could not be allowed if the workman had not been recruited after following the mandatory requirement of Articles 14 and 16 of the Constitution of India. The Hon'ble Supreme Court observed the issue that was to be determined was; 'whether the validity of initial appointment of a workman can be questioned in a case in which the Court/Tribunal has to determine whether the termination of services of the workman which comes within the meaning of 'retrenchment' is violative of Section 25-F of the Act'. While allowing the appeal of the appellant workman in the said case, it was held that it was open to the employer to issue an order of 'retrenchment' on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with the Rules. Even for retrenchment on such ground, unfair labour practice could not be resorted to and thereby the workman could not be retrenched on such ground without notice, pay and other benefits in terms of Section 25-F of the Act if he continues for more than 240 days in a calendar year. Besides, when no such plea was taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of

the Constitution of India or in violation of any statutory Rules or his appointment was a back-door appointment, while granting relief, the employer could not take a plea that the initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by an appropriate government for determination of question whether the initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India or statutory Rules. Only if such a reference is made, a workman then is required to prove lead evidence to prove that he was appointed by following the procedure prescribed under the Rules and his initial appointment was legal. In the said case, the services of the appellant were not terminated on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. No such reasons were shown in the order of retrenchment, nor was such a plea raised while reference was made by the appropriate government for adjudication of the dispute between the employee and the employer. In the absence of such ground it was held that it was not open for the High Court to deny the benefit for which the appellant was entitled on the ground that his initial appointment was in violation of Articles 14 and 16 of the Constitution of India.

In Durgapur Casual Workers Union and others versus Food Corporation of India and others, Civil Appeal No. 10856 of 2014 (Arising out of SLP (C) No. 31531 of 2009) decided on 09.12.2014, the Supreme Court again considered the question; 'whether an issue relating to the validity of the initial appointment could be raised in the absence of any specific pleading or

reference?' Besides, 'the Tribunal having held, as affirmed by the High Court, that the respondent Corporation had committed unfair trade practice against the workmen depriving them of status and privileges of permanent workmen; whether the workmen were entitled for the relief of absorption?.

It was held after referring to Umadevi's case (supra) and other judgments that a similar issue relating to unfair trade practice by the employer and the effect of the decision of Umadevi in grant of relief had been considered in Ajay Pal Singh versus Haryana Housing Corporation (supra) in which the Supreme Court held that the provisions of the Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair practice was neither the subject matter for decision nor was decided in Umadevi's case. It was held that admittedly no plea was taken by the Corporation before the Tribunal that the initial appointments of the workmen were illegal or they were appointed through back-door means. In this background, the Supreme Court held that it was not open for the Division Bench of the High Court particularly in the absence of any such plea taken by the Corporation before the Tribunal to come to a finding of fact that the initial appointments of the workmen were in violation of Articles 14 and 16 of the Constitution of India, nor it was open to the High Court to deny the benefit to which the workmen were entitled and the Tribunal having given specific finding of unfair trade practice on the part of the management of the Corporation, it was not open to the Division Bench of the High Court to interfere with the impugned award. The appeal of the workmen was

allowed.

In the present case, the question whether initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India was never in issue in the reference that was made to the Labour Court. Moreover, it is not the case of the appellants that the services of the respondent were dispensed with as his initial appointment was in violation of Articles 14 and 16 of the Constitution of India or any Statutory Rules. The termination was on the ground that Barnala Sub Division has been merged into Ludhiana Sub Division and that no work was left. This stand of the appellants as already noticed has been held to be negated when reinstatement in service of workman was ordered at Barnala itself in pursuant to the earlier award in favour of the respondent-workman.

In the circumstances, it is to be noticed that the plea of the appellants based on the judgment of the Supreme Court in Umadevis's case would not be tenable.

For the foregoing reasons, there is no merit in the appeal and the same is accordingly dismissed. There shall, however, be no order as to costs.

(S. S. Saron)
Judge

21.04.2015
A.Kaundal

(Ramendra Jain)
Judge

Note: Whether to be referred to the Reporter: Yes