

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

Letters Patent Appeal No. 794 of 2014 (O&M)
Date of Decision: September 15, 2015

Shri Bhagwan

.....Appellant

Versus

Presiding Officer, Labour Court-cum-Industrial Tribunal, Hissar and others

.....Respondents

CORAM: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. Vivek Khatri, Advocate, for the appellant.

Mr. Pankaj Gupta, Advocate, for respondent Nos.2 and 3.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Civil Miscellaneous No. 1801-LPA of 2014:

We have heard learned counsel for the parties on the application for condonation of delay.

02. In view of the submissions made at the bar and what has been stated in the application, which is supported by affidavit of the applicant, we are satisfied that the appellant was prevented by a sufficient cause from bringing the appeal within the prescribed period.

03. The application, therefore, succeeds and is accepted and delay of eight days in filing the appeal is condoned.

Letters Patent Appeal:

04. By way of this intra court appeal under Clause X of the Letters Patent, appellant Shri Bhagwan impugns the correctness of order dated March 12, 2014 whereby the learned Single Judge has dismissed Civil Writ Petition No. 22744 of 2011 which was brought by the appellant to assail Award of Labour Court dated October 07, 2011 whereby appellant's plea for reinstatement in service was rejected and, instead, respondent-Management was directed to pay to the appellant compensation amounting to Rs. 50,000/-.

05. Appellant's case before the learned Labour Court was that he had joined the respondent-Management as a Chowkidar on May 27, 1995 at a monthly salary of Rs. 2440/-. He was transferred to Fatehabad and was to join his duty there on May 09, 2001 but was not allowed to join. His services were, thus, terminated orally and without complying with mandatory provisions of the Industrial Disputes Act, 1947 ('ID Act', for short); without holding a domestic enquiry; and his juniors were retained in service.

06. To contest appellant's claim for reinstatement, the respondent-Management came out with the plea that the appellant had not completed 240 days in a calendar year with the respondent-Management and the work for round the clock security, watch and ward of the stock of wheat had been given on contract basis at Fatehabad through a private contractor under Contract

Labour (Regulations and Abolition) Act, 1970; he had worked only for 5 months (156 days) in the year 1996. In the subsequent years also i.e. in 1997, 1998 and 1999, he had never completed 240 days. In the year 2000, he had worked only for 31 days in January, for 29 days in February and for 31 days in March. The work was seasonal in nature and as soon as stocks of wheat were exhausted at the godowns, there was no further work and, accordingly, appellant's reinstatement was not possible.

07. In the replication filed on behalf of the appellant averments of the respondent-Management regarding non-completion of 240 days were controverted saying that appellant's signatures were there on the gate passes which falsifies the claim of the management and he had received wages till 08.05.2001. No attendance had been marked for many months in the register to frustrate appellant's claim regarding completion of 240 days in a year.

08. Learned Labour Court, on appraisal of pleadings of the parties and evidence adduced by them, recorded the following finding:

"13. From the evidence on the file, the claim of the applicant that he was appointed as Chowkidar on 27.05.1995 and worked on said post continuously up to 08.05.2001 is not proved. Rather his employment with the respondents is proved for the period from 24.04.1996 to May 2000. Even if the employment of the applicant with respondents is proved for the period from 24.04.1996 to May 2000, provisions contained in Section 25-F of the Act were required to be complied with as he worked continuously during said period except in the month of April 2000 which were admittedly not complied with. He was neither given notice mentioning the reasons for retrenchment nor wages in lieu of notice period nor compensation."

09. In view of the above-cited conclusion, learned Labour Court, vide Award dated October 07, 2011, held the appellant not entitled to reinstatement but keeping in view appellant's length of service awarded in his favour compensation amounting to Rs. 50,000/-.

10. The award was challenged by the appellant in CWP No.22744 of 2011 but the same has been upheld by the learned Single Judge, vide order dated 12.03.2014.

11. We have heard learned counsel for the parties and have also examined the documents available on record.

12. On behalf of the appellant it has been argued that appellant's juniors have been retained in service by the respondent-Management and while terminating his services neither a domestic enquiry was held nor mandatory provisions of Section 25F of the ID Act adhered to. In these circumstances the appellant is entitled to reinstatement. It has also been argued that though it is not a case where the appellant could be awarded compensation in lieu of reinstatement yet, were it so, the compensation allowed by the learned Labour Court and upheld by the learned Single Judge is very meager if seen in the light of the length of service put in by the appellant.

13. Learned counsel for the respondent-Management, however, has defended the impugned judgment saying that in the facts and circumstances of the case the appellant has rightly been denied reinstatement in service and the amount of compensation is, rather, on the higher side.

14. Nothing more has been urged.

15. Though finding of the learned Labour Court is that appellant's employment with the respondent-Management for the period from 24.04.1996 to May 2000 stands proved and that being so provisions of Section 25F of the ID Act were required to be, and were not complied with, but it has been rightly observed by the learned Single Judge that the definition of continuous service given in Section 25B of the ID Act provides that the workman has to complete 240 days during the period of 12 calendar months preceding the date with reference to which calculation is to be made and no benefit could be given to the appellant for the service rendered by him from 24.04.1996 to May 2000, because once 240 days had not been completed prior to the alleged retrenchment, provisions of Section 25-F of the ID Act would not come into play and, as such, the appellant was not entitled to any protection as he could not plead that there was violation of the provisions of the ID Act. Observations of the learned Single Judge are to the following effect:

“In pursuance of the said directions, the Labour Court had to examine evidence in detail. The applicant moved an application for issuance of directions to respondents for production of various records. Since the workman was terminated on 08.05.2001, as per his own case, the muster rolls of Fatehabad centre for April, 1996 to 2001 and gate pass for the Fatehabad centre for the same period were produced as Ex.W-2. The name of the applicant was found mentioned from the year 1996 to the year 2000 as per Ex.W-2 and the gate passes Ex.W-3 to Ex. W-42. However, as per the record, the applicant only worked upto May, 2000 and not thereafter. Thus, as per the evidence on the record, he never worked for 240 days preceding his alleged termination in May, 2001. Once it is the categorical case of

the petitioner himself that he worked for 240 days preceding his termination in May, 2001, the Court was to examine that whether the provisions of the Act had been complied with and if he had completed the said period in the preceding 12 months as observed by this Court on 12.02.2009 in view of the provisions of Sections 25-B and 25-F of the Act. The benefit which has been given to him is for the year 2000 which could not have been given by the Labour Court. The definition of continuous service given in Section 25-B of the Act provides that the workman has to complete 240 days during the period of 12 calendar months preceding the date with reference to which calculation is to be made. Once the case of the workman himself was that he had been retrenched on 08.05.2001, the Labour Court was to see whether he had worked for 240 days immediately preceding the said date in view of the provisions of Sections 25B and 25F of the Act. However, as noticed above, benefit was given for the employment from 1996 to May, 2000, which is not permissible under the provisions of the Act. Once 240 days had not been completed prior to the alleged retrenchment, the provisions of Section 25-F of the Act would not come into play and no protection could be granted and the workman could not plead that there was any violation of the provisions of the Act, which would entitle him to reinstatement.

Resultantly, this Court is of the opinion that submission of counsel for the petitioner that there was violation of Section 25-F of the Act and that he was entitled for reinstatement is without any justification. Since the management has not preferred any writ petition against the said award, the question of modifying the award pertaining to the grant of compensation which has been granted on this principle does not arise.”

16. We have not been able to persuade ourselves to take a view contrary to what has been held by the learned Single Judge.

17. Appellant's submissions that his juniors have been retained in service, is not backed by any evidence and, as such, deserves summary rejection.

18. However, in view of the fact that the appellant worked with the respondent-Management for the period from 24.04.1996 to May 2000 and the respondent-Management has not challenged this finding, we earnestly feel that ends of justice shall be sufficiently met if the amount of compensation is enhanced from Rs. 50,000/- to Rs. One lac. Consequently, the amount of compensation payable to the appellant is enhanced to Rs. One lac. This, however, shall be inclusive of the amount of compensation awarded by the learned Labour Court and stated to have already been paid to the appellant.

19. In the result, the impugned order stands modified to the extent indicated above and the appeal is disposed of in the afore-stated terms. However, in the facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 15, 2015
adhikari