

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

LPA No.639 of 2015 (O&M)

Date of decision:- 10.07.2015.

Lakhbir Singh

..... Appellant.

Versus

The Presiding Officer, Labour Court, Patiala and others Respondents.

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

Present:- Mr. Raj Kaushik, Advocate, for the appellant.

S.S. Saron, J.

The Letters Patent Appeal has been filed by Lakhbir Singh (appellant - workman) against the order dated 24.03.2014 passed by the learned Single Judge in CWP No.13766 of 2010 whereby his petition against the award dated 07.08.2009 (Annexure P1) passed by the learned Presiding Officer, Labour Court, Patiala ('Labour Court' - for short) (respondent No.1) has been disposed of by granting a *lump sum* payment of Rs.1,50,000/- in lieu of reinstatement in service. The appellant assails the said order of the learned Single Judge to the extent that reinstatement in service along with the consequential benefits has been declined.

Along with the appeal, civil miscellaneous application, i.e. CM No.1305-LPA of 2015, has been filed seeking condonation of 34 days' delay in filing the appeal. Besides, civil miscellaneous application, i.e. CM No.1306-LPA of 2015, has been filed seeking condonation of 267 days' delay in re-filing the appeal.

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

The appellant was appointed as a Tubewell Operator by the respondent department. He worked from 01.12.1994 till 30.09.1997. According to the appellant, his services were illegally terminated on 01.10.1997 without any notice, charge-sheet, notice pay and compensation. The appellant aggrieved against his termination from service, served a demand notice dated 17.09.1998. Reconciliation proceedings were carried out, however, these were unsuccessful. His dispute in terms of Section 10 of the Industrial Disputes Act, 1947 ('Act' - for short) was referred to the learned Labour Court (respondent No.1) by the Labour Commissioner, Punjab, Chandigarh. The reference order was to the effect:-

“Whether the services of workman Lakhbir Singh were terminated in proper and justified manner by the management.
If not so, what relief workman is entitled to?

According to the appellant, at the time of termination of his services, he was getting monthly salary of Rs.3020/- and his juniors were retained in service while he was removed from service. He pleaded that he had remained unemployed and was, therefore, entitled to be reinstated in service with continuity of service and full back wages.

The stand taken by respondents No.2 and 3 was that the workman was engaged on daily wages basis w.e.f. 01.12.1994 to 18.05.1995, then from 20.05.1995 to 31.05.1995, from 01.04.1996 to 30.04.1996, 04.11.1996 to 30.11.1996 and from 01.03.1997 to 30.09.1997. Thereafter, he was not engaged due to non-availability of work with the respondent department. According to the respondent department, the

workman (appellant) had not completed 240 days of continuous service in the last calendar year.

It was also pleaded that the appellant had earlier filed a civil suit on the same subject matter which was dismissed by the Court of learned Civil Judge (Senior Division), Patiala on 16.03.1999. Therefore, the present reference was not maintainable.

The learned Labour Court (respondent No.1) considered the evidence and material on record and held that from the perusal of muster rolls Ex.M28 and Ex.M32 to Ex.M38, it was evident that the workman had completed more than 240 days of service in the last preceding year immediately before his termination from service on 01.10.1997. In fact, Amrit Pal Singh, SDE (MW1) had tendered in evidence his affidavit Ex.M1 in which he deposed that the workman (appellant) was engaged on daily wages basis on 01.12.1994 and he worked up to 30.09.1997 with intermittent breaks as per the requirement of the work. He proved the muster rolls Ex.M2 to Ex.M39. The learned Labour Court (respondent No.1) observed that Amrit Pal Singh, SDE (MW1) had admitted in his testimony that the workman (appellant) received salary for 241 days in the last twelve months immediately preceding 01.10.1997. Therefore, it was held that the termination from service of the appellant amounted to retrenchment even if the services were discontinued due to non-availability of work with the department. It was found that neither notice pay, nor retrenchment compensation was paid to the appellant by the respondent department when his services were dispensed with. Accordingly, it was held that there was a violation of the provisions of Section 25-F of the Act. The appellant-workman was, however, not held entitled for reinstatement

in service. It was observed that non-compliance of the provisions of Section 25-F of the Act although may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would, however, not mean that such relief is to be granted automatically or as a matter of course.

The learned Labour Court placed reliance on Haryana State Electronics Development Corporation Ltd. v. Mamni, (2006) 9 SCC 434. Hon'ble the Supreme Court in the said case modified the award that was assailed before it by directing that the workman shall be compensated by payment of Rs.25,000/- instead of order of reinstatement with back wages.

The learned Labour Court observed that the respondent department was governed by its own service rules and regulations and the appellant was not a regular employee of the respondent department. Proper procedure, it was held, had not been followed while giving him employment. It was further held that the services of the appellant were terminated in 1997 and period of twelve years had already elapsed. Therefore, the workman was held entitled for compensation of Rs.12,000/- which was directed to be paid to the workman by the respondent department.

The workman (appellant) aggrieved against the order dated 07.08.2009 (Annexure P1) passed by the learned Labour Court (respondent No.1) filed a petition in this Court assailing the said order to the extent that reinstatement in service had not been given to him. The learned Single Judge placed reliance on State of M.P. and others v. Lalit Kumar Verma, (2007) 1 SCC 575. In the said case, 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 by Hon'ble the Supreme Court 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) 4 SCC 1. It was held that the original appointment of the third respondent being illegal and not irregular, the case would not come within the exceptions 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, it was held that the interest of justice 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.

The learned Single Judge also placed reliance on the case Assistant Engineer, Rajasthan Development Corporation and another v. Gitam Singh, (2013) 5 SCC 136. Hon'ble the Supreme Court, in the said case, held that before exercising its judicial discretion under Section 11-A of the Act all 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 were to be kept in view before grant of relief in an industrial dispute. It was said that a distinction had been drawn between a daily wager and an employee holding a regular post for the purposes of consequential relief. In the case of wrongful termination of a daily wager who had worked for a short period, the award of reinstatement could not be

said to be proper relief and rather award of compensation in such a case would be in consonance with the demand of justice.

Keeping in view the aforesaid facts and circumstance, the learned Single Judge held that the workman had completed 240 days of service preceding his termination and a period of seventeen years had passed since the relationship of employer/employee was severed. Therefore, in its opinion, a sum of Rs.1,50,000/- was ordered to be granted to the appellant in *lump sum* in lieu of reinstatement.

The appellant has assailed the said order and strong reliance has been placed on the decision of Hon'ble the Supreme Court in Jasmer Singh v. State of Haryana and another, Civil Appeal No.346 of 2015, decided on 13.01.2015. It is submitted that in view of the aforesaid dictum of Hon'ble the Supreme Court, the appellant is entitled to reinstatement in service.

We have given our thoughtful consideration to the matter.

As has already been noticed in State of M.P. and others v. Lalit Kumar Verma (supra) and Assistant Engineer, Rajasthan Development Corporation and another v. Gitam Singh (supra), reinstatement of a workman who has been retrenched from service is not to be automatic or as a matter of course. Other facts and circumstances are also to be taken into consideration including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination had been set aside, etc.; besides, a distinction is to be drawn between a daily wager and an employee holding a regular post.

In the present case, the appellant was admittedly a daily wager and he was appointed with intermittent breaks. His appointment was held

by the learned Labour Court (respondent No.1) to be improper inasmuch as it was observed that proper procedure had not been followed while giving him employment. Such type of *ad hoc*/temporary appointment being contrary to the provisions of Articles 14 and 16 of the Constitution, it was held to be illegal as had been held by Hon'ble the Supreme Court in Uma Devi's case (supra). The learned Labour Court (respondent No.1) in terms of its award dated 07.08.2009 and the learned Single Judge in terms of its order dated 24.03.2014 did not consider the reinstatement of the appellant to be adequate after a lapse of seventeen years when the relationship of an employer and an employee had been severed.

Learned counsel for the appellant has, however, placed reliance on Jasmer Singh's case (supra) for reinstatement of the appellant in service. In the said case, reinstatement of the workman in service was indeed ordered. However, the Industrial Tribunal-cum-Labour Court, Panipat, in terms of its award had set aside the order of termination passed against the workman and ordered his reinstatement with continuity of service and full back wages. The award of the Industrial Tribunal was assailed by the employer by way of a writ petition in this Court. The Supreme Court observed that the award had been challenged by the employer urging untenable contentions and that the High Court exercised its jurisdiction contrary to the judgment of the Supreme Court in the case Syed Yakoob v. K.S. Radhakrishnan and others, (1964) 5 SCR 64 : AIR 1964 SC 447, which was referred to in the case of Harjinder Singh v. Punjab State Warehousing Corporation, (2010) 3 SCC 192. A reference was also made to the decision in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana), (2010) 5 SCC

497, to hold that the learned Single Judge and the Division Bench of the High Court erred in exercise of their supervisory powers under Article 227 of the Constitution of India in setting aside the finding of fact recorded on the facts based on the pleadings and evidence on record.

It was in view of the case law referred to in the facts and circumstances of the said case that the setting aside of the award of the Industrial Tribunal by the learned Single Judge which was affirmed by a Division Bench was held to be vitiated in law as the same was contrary to the judgments of the Supreme Court referred to therein. Therefore, it was in the facts and circumstances of the said case where the Labour Court-cum-Industrial Tribunal had ordered reinstatement in service of the workmen in the said case, which was held to be improper by this Court, that the Supreme Court restored the award of the Labour Court-cum-Industrial Tribunal.

In the present case, the learned Labour Court did not consider it appropriate in the facts and circumstances to reinstate the appellant/workman in service. Rather it was held that the reference had remained pending for more than ten years and the interest of justice would be sub-served if compensation of Rs.12,000/- was directed to be paid to the workman (appellant) by the respondent department.

The learned Single Judge in the present case has upheld the award of the learned Labour Court and enhanced the amount of compensation to Rs.1,50,000/- by holding that the workman had worked only for two years and nine months at the relevant point of time, i.e. from 01.12.1994 to 30.09.1997, and that a period of seventeen years had lapsed since the relationship of employer and employee was severed. It was held

to be not a case where the award passed by the learned Labour Court had been set aside. Therefore, the ratio of the judgment in Jasmer Singh's case (supra) would not apply to the facts and circumstances of the present case. Besides, each case is to be considered on its own facts and circumstances. There can be no strait jacket formula in this regard. At this stage, after a lapse of more than 18 years, it would be quite iniquitous and improper to order reinstatement of the appellant, especially when the learned Single Judge has enhanced the amount of compensation payable to him from Rs.12,000/- to Rs.1,50,000/- with interest at the rate of 9% per annum.

In the circumstances, we find no merit in the appeal. The question of delay in filing and re-filing the appeal in the circumstances is only academic.

Accordingly, the appeal and the civil miscellaneous applications seeking condonation of delay in filing and re-filing the appeal are dismissed.

(S.S. SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

10.07.2015
Ramesh/A.Kaundal