

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

LPA No.1305 of 2015 (O & M)

Date of Decision: *February 27, 2016*

Bhoop Singh

..... APPELLANT

VERSUS

State of Haryana & others

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE JASPAL SINGH

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. Lajpat Sharma, Advocate, for Ms. Garima Sharma, Advocate, for the appellant.

Mr. R.D. Sharma, Deputy Advocate General,
Haryana.

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Jaspal Singh, J

CM No. 2781-LPA of 2015

For reasons mentioned in the application under Section 5 of
Limitation Act, delay of 131 days in filing the appeal is condoned.

Application is allowed.

L.P.A. No.1305 of 2015

1. The instant letters patent appeal has been preferred by Bhoop Singh, appellant – petitioner, against judgment dated March 23, 2015 rendered by the learned Single Judge in Civil Writ Petition No.1914 of 2011.

2. The facts giving rise to the instant case are that the appellant – petitioner was appointed as Beldar –cum- Mali w.e.f. May 15, 1990 and worked as such upto to January 31, 2000. Thereafter, he was not allowed to resume his job from the first week of February, 2000 on the pretext that his services are no more required.

3. Bhoop Singh approached the Industrial Tribunal –cum- Labour Court, Hisar (for short, ‘Tribunal’) against termination of his services. The Tribunal came to the conclusion that the petitioner has succeeded to prove that he worked continuously for a period of 240 days preceding the date of his alleged termination. The Tribunal further observed that though the petitioner had completed 240 days, yet he is not entitled for reinstatement with back wages except for the compensation. Accordingly, he was granted compensation to the tune of Rs.36,000/-, vide impugned order dated May 24, 2010.

4. The appellant, through the aforesaid writ petition, challenged order dated May 24, 2010 passed by the Tribunal, Hisar. In response to the notice, respondent Nos.1, 3 and 4, in their reply, alleged that the petitioner was not working against any sanctioned post, therefore, he cannot be reinstated. It was also averred that he was working on daily wages and had not completed 240 days, therefore, his

removal falls under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (for short, 'Act').

5. Having heard learned counsel for the parties and after scrutinizing the record, the learned Single Judge found no error in the order passed by the Tribunal. Consequently, the writ petition was dismissed vide impugned judgment dated March 23, 2015.

6. Aggrieved by the aforesaid decision of learned Single Judge, Bhoop Singh has preferred the instant letters patent appeal.

7. While assailing the impugned award passed by the Tribunal and affirmed by learned Single Judge, learned counsel for the appellant has argued that it is fully proved on record that since the appellant has already served the respondents for a period of more than 240 days preceding 12 months of his termination, in a calendar year, he is entitled to reinstatement with back wages and a meagre amount of Rs.36,000/- as compensation without assigning any reason is not warranted and is not panacea. The termination of his services is absolutely illegal, that too, without following the provisions contained in Section 25F of the Act and he deserves to be reinstated alongwith back wages.

8. Counsel for the respondent, on the other hand, submits that the amount assessed as compensation is just and valid as the appellant was a mere daily wager.

9. We have given an anxious thought to the aforesaid submissions made by learned counsel for the appellant and have perused the record.

10. A perusal of the findings recorded by the Tribunal reveal that in view of the failure of the respondents to rebut the averments made by the workman and produce the record pertaining to his service, an adverse inference was drawn against the respondents that the workman worked continuously with the respondents from 15.05.1990 to 31.01.2000 as Beldar-cum-Mali and completed 240 days in the preceding 12 months, thereby rendering his retrenchment on 01.01.2000 violative of Section 25 of the Industrial Disputes Act, 1947. The Tribunal, thereafter, held that as the workman was engaged on daily wages without following rules and principles of the Article 14 of the Constitution of India, he is not entitled to reinstatement but compensation of Rs.36,000/-. The finding so recorded is incorrect as there is no evidence on record much less adduced by the respondents or referred to by the Tribunal that the appellant was appointed in violation of the rules and though we do not disagree with denial of the relief of reinstatement, are not inclined to uphold the award insofar as a paltry sum of Rs.36,000/- has been awarded as compensation. The compensation, in our opinion, to be awarded, in lieu of reinstatement must have relation to the nature of service, the salary drawn, the length of service and the amount payable, in case, back wages are awarded. The compensation of Rs.36,000/- awarded without reference to these facts is wholly inadequate. The award of compensation cannot be left to whims and fancies of Tribunal. The appellant has worked for more than

10 years before his termination. If the appellant was ordered to be reinstated, the respondents would have to pay between Rs.8 to 10 lacs as arrears of salary. Thus, taking into consideration these facts, the ends of justice would be served if the appellant is awarded compensation of Rs.3 lacs. The appeal is allowed, the order passed in the writ petition and the impugned award are modified accordingly.

(Rajive Bhalla)
Judge

(Jaspal Singh)
Judge

February 27, 2016

Vinay