

In the High Court of Punjab and Haryana, at Chandigarh

Letters Patent Appeal No. 485 of 2015 (O&M)

Date of Decision: 08.08.2016

The General Manager, Telecom, BSNL Telecom District Ferozepur

... Appellant(s)

Versus

Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-I,
Chandigarh and Another

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Mahesh Grover.
Hon'ble Mr. Justice Shekher Dhawan.**

Present: Mr. D.R.Sharma, Advocate
for the appellant.

Mr. P.K.Longia, Advocate
for respondent No.2.

Mahesh Grover, J.

The appellant impugns the order dated 27.2.2015, which in turn was passed on the consensual stand of the parties being covered by the ratio of another decision rendered in Civil Writ Petition No. 3569 of 2011.

The respondent No.2 was employed on daily wages on monthly wages of ₹ 2,138/- as a Clerk and worked with the appellant for almost four years when her services were terminated leading to an industrial dispute, which was answered in affirmative entitling her to reinstatement in service, which order was upheld by the learned Single Judge and is now the cause of grievance of the appellant in the present proceedings.

It has been contended by learned counsel for the appellant that the decision in Civil Writ Petition 3596 of 2011 was carried in Letters Patent Appeal No. 33 of 2015, where the relief of reinstatement was moulded into that of compensation of ₹ 3,00,000/-. He then contends that since the writ petition preferred by the present respondent No.2 was disposed of in terms of the aforesaid writ petition, any order passed in appeal arising therefrom would also govern the case of present respondent No.2 as well.

Learned counsel for respondent No.2 has tried to make out a distinction by saying that the workmen in Civil Writ Petition No. 3596 of 2011 were engaged for part time employment, whereas the case of present respondent No.2 was of employment on full time basis which fact, we find to be contrary to the record as the entire case of the workman herself was that she was working on daily wages. There is nothing on record to suggest that the present respondent No.2 was placed in a more advantageous position than the workmen in Civil Writ Petition No. 3596 of 2011 so as to carve out a distinction for herself.

Having failed to establish any meaningful deviation from the facts of the cases of the other workmen, there would be no reason to take any different view than the one taken in Letters Patent Appeal No. 33 of 2015 arising from Civil Writ Petition No. 3569 of 2011 in which terms the writ petition of present respondent No.2 was also disposed of. We also notice that the workmen in Civil Writ Petition No. 3596 of 2011 had worked with the appellant for more than ten years, whereas employment of present respondent No.2 was for four years. Therefore, even if in terms of pay, it is

assumed that the present respondent No.2 was having an advantageous position qua the other workmen, the length of period of service of the workmen in Civil Writ Petition No. 3596 of 2011 would offset such an advantage. Consequently, looking into it from all the angles, we are of the view that the case of appellant would be squarely covered by the ratio of Letters Patent Appeal No. 33 of 2015, which in turn stood decided on the strength of judgment rendered by the Hon'ble Apex Court in ***BSNL v. Bhurumal, (2014) 7 Supreme Court Cases 177***, wherein it was held as herebelow:-

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. Reasons for denying the relief of reinstatement in such

cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka v. Uma Devi, (2006) 4 SCC 1), Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. *We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned*

workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

Thus, we modify the impugned order and instead of reinstatement in service, the respondent No.2/workman is held entitled to the compensation of ₹ 3,00,000/- along with interest at the rate of 9% per annum from the date of termination of her services till the date of payment/realization thereof.

Letters Patent Appeal stands disposed of.

(Mahesh Grover)

Judge

(Shekher Dhawan)

Judge

August 08, 2016

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No