

LPA no. 53 of 2015 (O&M) 1

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

**LPA no. 53 of 2015 (O&M)
Date of Decision : 30.01.2017**

Om Parkash

....Appellant(s)

Versus

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

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MRS JUSTICE SNEH PRASHAR**

Present : Mr.Anurag Jain, Advocate for the appellant

Mr. Vishal Garg, Addl. AG, Haryana

MAHESH GROVER, J.(ORAL)

This appeal is directed against the judgment of the learned Single Judge dated 20.11.2014. It would be imperative to notice the facts and since they have been recorded somewhat in detail by the learned Single Judge in the impugned judgment we would intend to take advantage of it and reproduce the same in verbatim:-

“Brief facts would require notice.

Petitioner was engaged as Groundman in the Sports and Youth Affairs Department, Haryana w.e.f. 28.02.1991 on wages fixed by the Deputy Commissioner from time to time. His services were terminated on 01.03.1995. Industrial dispute having been raised, a compromise was arrived at with the employer/management and he was taken back on

duty upon having agreed to relinquish his claim for backwages. Petitioner filed CWP No.10552 of 2002 praying for issuance of directions to take a decision on his representation dated 11.02.2002, wherein he had claimed the benefit of regularization of his service. Such writ petition was disposed of by this Court on 12.07.2002 with a direction to the department to decide his representation within a period of three months. Vide order dated 24.08.2002, representation of the workman/petitioner was dismissed on the ground that his claim was not covered as per relevant policy/instructions as also on the ground that he did not possess the requisite educational qualifications prescribed for the post which was 8th class pass whereas he was illiterate. Vide order dated 26.08.2002, services of the petitioner were terminated. Petitioner then filed CWP No.15106 of 2002 impugning the order dated 24.08.2002 declining the relief of regularization in service as also the order dated 26.08.2002 whereby his services had been terminated. During the pendency of such writ petition, petitioner was taken back into service. However, vide order dated 19.08.2004, this Court issued directions to consider the claim of the petitioner as regards regularization under the new

policy issued by the State Government dated 01.10.2003. Vide order dated 23.11.2004, claim of the petitioner seeking regularization of service was yet again rejected and his services were dispensed with vide order dated 01.12.2004. The petitioner then filed CWP No.19352 of 2004. In such writ petition operation of the order of termination was stayed and directions were issued to the respondent/department to consider the case of the petitioner for regularization in the light of the Division Bench judgment of this Court in ***Kanta Gandhi Vs. State of Haryana, 1997 (4) RSJ 760.*** Order dated 11.11.2005 was passed by the department rejecting the claim of the petitioner for regularization of his service yet again on the ground that he does not fulfill the educational qualifications required for the post. Such order was challenged by the petitioner by filing CWP No.18120 of 2005 and which was dismissed as withdrawn on 21.09.2006. Vide order dated 01.02.2007, services of the petitioner were terminated after allegedly complying with the provisions of Section 25-F of the Act. Even such order of termination dated 01.02.2007 was impugned by the petitioner by filing CWP No.3298 of 2007 and which was dismissed as withdrawn on

05.11.2007 by granting liberty to avail the alternate remedy. Thereafter the petitioner/workman raised an industrial dispute by filing demand notice dated 05.02.2008 and upon conciliation having been failed, matter was referred to the Labour Court for adjudication of the dispute and which has led to the passing of the impugned award dated 09.05.2012 (Annexure P-1).”

Before the writ Court where the award dated 9.5.2012 was challenged the learned Single Judge recorded a positive finding in favour of the appellant of there being a violation of the provisions of Section 25-F of the Industrial Disputes Act but went on to award a compensation of Rs. 3 lacs as against the prayer of the workman for reinstatement and this is now a cause of grievance to him. In the present appeal where he contends that looking at the length of service and the period of his engagement with the respondents since 1991 till the date of termination i.e 1.2.2007 he would be entitled to reinstatement.

Prayer is opposed by the respondent who has referred to the facts to point out intermittent engagement as against the continuous one to disentitle the appellant to relief of reinstatement.

After hearing learned counsel for the parties, we are of the opinion that it is a case where the appellant has been subjected unfairly to the might of the respondents – State, who found him fit to be retained in service for 16 long years but inflicted the termination upon him every time when he raised a plea of regularization which too was denied to him on the solitary ground of his not possessing educational qualifications, which

would lead us to wonder that if he was fit enough to discharge his duties for 16 years, would the mandate of educational qualifications assume any significance?

In any case, we would not comment on the issue of regularization of his services as this is not germane to the present controversy. What is to be decided by us is whether the workman's services once terminated in complete violation of provisions of Section 25-F of the Act would entitle him to reinstatement when he has been engaged by the employer for more than a decade and half. The facts as noticed above also indicate that each time the services of the workman were terminated he was taken back in service by the respondents themselves. Therefore, it would not lie in their mouth to contend that his engagement with them was intermittent rather he was subjected to unfair labour practice by the State which can ill afford as it proclaims itself to be a model State. Our own High Court in case titled as **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs Presiding Officer, Labour Court, Gurdaspur and another** reported as 2014 (4) SCT 514 while discussing the case of **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd., 2014 (3) SCT 661** laid down the following principles:-

(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant

statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not

filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement”

Applying the ratio of the aforesaid judgment we are of the opinion that the learned Single judge fell in error while ignoring the long period of engagement. It is one of the prime factors to be considered at the time of grant of relief to a workman in terms of reinstatement or compensation. We, therefore, modify the judgment of the learned Single Judge to the grant of relief of reinstatement to the appellant instead of compensation as determined in the impugned judgment alongwith 50% back wages which shall include the enhanced salary component as admissible to similarly situated employees working on daily wages.

Disposed of.

(Mahesh Grover)
Judge

(Sneh Prashar)
Judge

30.01.2017

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No