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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19666-2013

Date of Decision : Sept. 11, 2018

Avtar Singh

.... Petitioner.

Versus

The Presiding Officer, Industrial Tribunal, Patiala
and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Raj Kaushik, Advocate
for the petitioner.

Mr. Vikrant Sharma, Advocate,
for respondents No. 2 to 4.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing the impugned award dated 08.08.2013 (Annexure P/6) passed by learned Industrial Tribunal, Patiala (for short, "**learned Tribunal**") whereby the petitioner-workman has not been allowed the relief of reinstatement with continuity of service and back wages rather, a lump-sum compensation of Rs.50,000/- has been awarded to him.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner-workman was employed as daily wage worker in the office of Assistant Executive Engineer, TLSC, Sangrur where he joined on

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22.07.1998 and continued to work till 13.02.2004 when his services were abruptly terminated without holding any enquiry or issuance of show cause notice or payment of any retrenchment compensation. At that time, the petitioner was getting Rs.2,820/- as basic pay per month.

3. Respondent-Management contested the claim on the ground that appointment of the petitioner-workman was as daily wager only on the basis of recommendations of the Committee which was formed by the Chief Engineer. As per the respondent-Management, fair and proper enquiry was conducted before terminating the services of the petitioner and he was given full opportunity to defend his case.

4. Learned Tribunal on the basis of material and evidence available on the file, held that the services of the petitioner were terminated vide order, Ex. M4, in violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short "**the Act**") and awarded a lump-sum compensation of Rs.50,000/- for more than 5 years of employment.

5. Learned counsel for the petitioner-workman contended that though learned Tribunal held the termination of the petitioner to be illegal, but instead of ordering reinstatement with continuity of service and back wages, awarded a lump-sum compensation of Rs.50,000/- only which is totally inadequate. He has placed reliance upon Hon`ble Division Bench judgment of this Court in **LPA No. 754 of 2010, Municipal Council, Dina Nagar Vs. Presiding Officer, Labour Court, Gurdaspur and another, decided on 29.11.2014**, wherein compensation to the tune of Rs.1,00,000/- for each completed year of service was awarded in case of class IV employee (Peon).

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6. Learned counsel representing the respondent-Management contended that learned Tribunal has rightly held that appointment of the petitioner was not a regular employment and no proper procedure was followed at the time of his employment and his appointment was contrary to the guidelines laid down by Hon`ble Apex Court in **Secretary, State of Karnataka Vs. Uma Devi and others, 2006(2) LLJ 722 (SC)**. Learned Tribunal has also considered the fact that petitioner's services were terminated in the year 2004 and the reference was being decided in the year 2013 and by that time, it was not possible to order his reinstatement.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the basic facts that the petitioner continued to serve the respondent-Management from 22.07.1998 to 13.02.2004 and put in more than 5 years of service. His last drawn monthly wages were Rs.2,820/- only. Learned Tribunal has rightly held that the appointment of the petitioner was not a regular employment and proper procedure was not followed. More so, a period of more than 9 years has already elapsed after termination of services of the petitioner and rightly considered that lump-sum compensation would be the best suitable remedy in the matter. However, learned Tribunal has not even awarded fair compensation.

8. In **Municipal Council, Dina Nagar's case (supra)**, Hon`ble Division Bench of this Court awarded compensation at the rate of Rs.1,00,000/- for each completed year of service. It is settled proposition of law that for awarding lump-sum, the Court has to consider few factors

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i.e., (1) period of employment; (2). last drawn wages of the workman; and (3). procedure of appointment adopted in case of appointment of the workman. If all these factors are taken into consideration that the petitioner had served the Management for a period of more than 5 years and his last drawn wages were Rs.2,820/- and his appointment was not regular one and proper procedure as laid down in **Uma Devi's case (supra)** was not followed, this Court is of the considered view that fair compensation in this case shall be Rs.1,50,000/- as per view taken by Division Bench of this Court in **Sunil Kumar Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurdaspur and others, LPA No. 2078 of 2014**, decided on 19.11.2015 where the workmen had served for 4-1/2 years to 8-1/2 years and they were awarded compensation to the tune of Rs.30,000/- for each completed year of service. As such, the present petition is accepted and the amount of lump-sum compensation in this case is enhanced from Rs.50,000/- to Rs. 1,50,000/-. So ordered. The enhanced amount, as indicated above, be paid to the petitioner-workman within a period of 2 months from the date of receipt of a copy of this order, failing which the same will carry interest @ 9% per annum from the date of this order.

9. The writ petition stands partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

September 11, 2018.

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes