

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of Decision: 11.12.2018

1) CWP No. 21821 of 2013

Bhiwani Central Coop. Bank Ltd.& Anr.

..... Petitioners

*Versus*

Presiding Officer, Industrial Tribunal Cum Labour Court & Anr.

..... Respondents

2) CWP No. 10354 of 2015

Risal Singh through his LR's.

..... Petitioners

*Versus*

Bhiwani Central Coop. Bank Ltd.& Ors.

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present:- Mr. Surender Singh Dalal, Advocate  
for the petitioner (in CWP No.21821 of 2013) and  
for the respondent (in CWP No.10354 of 2015).

Mr. K.G. Chaudhary, Advocate  
for the respondent (in CWP No.21821 of 2013) &  
for the petitioner (in CWP No.10354 of 2015).

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**RAJIV NARAIN RAINA, J. (Oral)**

1. This order disposes of two petitions bearing CWP No. 10354 of 2015 titled 'Risal Singh through his LR's. vs. Bhiwani Central Coop. Bank Ltd.& Ors.' and CWP No. 21821 of 2013 titled 'Bhiwani Central Coop. Bank Ltd.& Anr. vs. Presiding Officer, Industrial Tribunal Cum Labour Court & Anr.'.

2. The management pleads that the award be set aside when it offers

reinstatement but without back wages. The workman states that he should be reinstated with full back wages.

3. I have heard both the parties on the moot points at some length.

4. The brief facts necessary to decide the case are that the workman- Risal Singh was appointed as a Gunman in the security set up of the petitioning Bank on 26.12.2008 through a service provider. There was an agreement drawn between the Bank and M/s Suryavanshi Security & Placement Services, Bhiwani on 25.08.2006 to provide staff with the stipulation contained therein that the Gunman candidate should be an ex-serviceman of minimum 5 years military service. The name of the petitioner was sent by the security agency to the Bank and he started attending work. The Bank later discovered that he was not an ex-serviceman and, therefore, the service provider could not have provided his name for security service in the Bank. The engagement being in violation of the agreement the petitioner's services were discharged when the agency withdrew his name on 13.04.2009 and the petitioner was relieved from duty of the Bank on 17.04.2009.

5. It appears from papers that after losing his job Risal Singh was engaged as a Peon-cum-Water Carrier. Risal Singh asserted that he served in this capacity from 17.04.2009 to 13.01.2010. The management says that the appointment was a result of fraud played by Risal Singh as the Bank had not appointed him and Mr. Dalal clarifies that at best it could have been a local arrangement a branch of the Bank without due authority of the appointing authority in the Bank. On discovery of this alleged fraudulent appointment the Bank asked Risal Singh to leave. However, what could not be disputed is that during this period Risal Singh, one way or the other received salary from the Bank. It was against this termination that Risal

Singh raised an industrial dispute by serving a demand notice on the Bank claiming reinstatement with continuity of service and back wages.

6. The matter was referred to the Labour Court in reference No.42 of 2010. M/s Suryavanshi Security & Placement Services, Bhiwani was not made a party and not even the management made an application to implead it in the reference. The trial before the Labour Court has ended in an award dated 12.07.2013 (P-6) which has been partially answered in favour of Risal Singh, as back wages have been denied to him but he has been granted reinstatement with effect from the date of the award with all consequential benefits other than those of back wages.

7. The Labour Court has returned a finding that the case of fraud set up by the management against the workman to obtain the second spell of appointment was not acceptable on the evidence available on record. The Labour Court read the evidence of Mahender Singh, Junior Accountant appearing as MW1. He tendered his evidence by way of an affidavit Ex.MW-1/A deposing on the lines of the case of the management. He admitted about the employment of Risal Singh as Security Guard during the period from 26.12.2008 to 17.04.2009 through outsourcing agency and then as a peon with the Bank for the period from 17.04.2009 to 13.01.2010, but deposed that the employment of Risal Singh as a Peon was a result of fraud played by him. In his cross-examination MW-1 admitted the employment of Risal Singh as continuous with the Bank for the period claimed from 26.12.2008 to 13.01.2010 firstly through outsourcing and then directly. The witness denied that the services of Risal Singh were terminated in an illegal and arbitrary manner.

8. The Labour Court has given a categorical finding in Para. 13 of the award that the workman remained in the employment of the respondents

as Peon for the period from 17.04.2009 to 13.01.2010 and there is absolutely no evidence except the oral assertion of MW-1 to the effect that the appointment of Risal Singh as peon was a result of fraud. Therefore, the Labour Court accepted the plea of the workman that he remained in direct employment in the second spell as a Peon for the period 17.04.2009 to 13.01.2010 and had by then completed more than 240 days in the preceding 12 months from the date of termination/retrenchment/disengagement.

9. There was neither an appointment letter nor a termination order in any of the two spells. If the workman had completed 240 days of service as required under Section 25-B then the benefit of Section 25-F had to be granted before effecting termination. The management indisputably had not complied with the provisions of Section 25-F and therefore, the termination was held to be bad in law.

10. As far as challenge to the termination invoking Section 25-G and 25-H is concerned, the Labour Court discussed these issues in para. 15 of the award and came to the finding that there was no violation of Section 25-G but in the subsequent paragraph a finding of fact has been recorded that there is violation of Section 25-H of the Act inasmuch as there was an admission in the testimony of MW-1 in his cross-examination that after terminating the services of Risal Singh a new person by the name of Smt. Raj Kumari was employed as peon through the outsourcing agency. The Labour Court concluded that there was violation of Section 25-H.

11. On these premises, the Labour Court considered the issue of what relief should be granted to the workman. Moreover keeping in view the relevant fact that the appointment was *de hors* the rules and it was a simple case of violation of Section 25-F of the Act, therefore, Risal Singh was held not entitled to the relief of reinstatement and in the circumstances of the

case compensation was thought the appropriate relief, but looking to the gravity of violation of Section 25-H of the Act that a person had been appointed in place of the petitioner without the management offering him an option as required under Section 25-H of re-entry into service and the post on which the workman was appointed was still in existence, the Labour Court was inclined to the view that the workman would be entitled to the relief of reinstatement but without back wages. That is how the award dated 12.07.2013 has been made directing reinstatement but without back wages.

12. After having considered the arguments on both sides, I am of the view that this is not a case for reinstatement because violation of an industrial right in section 25-F would not lead to automatic reinstatement if merely law and procedure of retrenchment is breached. A violation of the provisions of section 25-F of the Act, although illegal but still would not lead to automatic reinstatement as reasserted by the Supreme Court in '*Assistant Engineer, Rajasthan Development Corporation & Anr. vs. Gitam Singh*' (2013) 5 SCC 136 and *B.S.N.L vs. Bhurumal* (2014) 7 SCC 177. The reason which impels me to this view is that there is no proof of entry into service as Peon through outsourcing agency although as a Gunman Risal Singh came through an outsourcing agency but which appointment had to be discontinued for valid reason that it was contrary to the agreement signed between the management and the security agency.

13. Accordingly the prayer of the workman for reinstatement cannot be accepted even had he been alive. He has since passed away. His L.Rs on record claim the monetary benefits of the award in case they are granted. The question is what would be the adequate and reasonable compensation in this case. There are several indications in a plethora of judgments where the courts, the Supreme Court and the High Courts have granted compensation

in lieu of reinstatement and these varyt differently depending on case to case basis.

14. For this comparable handouts in case law can be seen in cases such as **BSNL v. Man Singh**, (2012) 1 SCC 558 in which the Supreme Court allowed compensation of Rs.2 lacs each to two workmen for services rendered on daily wages for about one year. In *Bhurumal* (Supra) the Supreme Court awarded Rs. 3 lakhs for three years service. In **Municipal Council, Dina Nagar v. Presiding Officer, Labour Court, Gurdaspur & Anr.**, 2015(1) RSJ 765 a broad rough and ready rule has been evolved by the Division Bench recommending compensation of Rs.1 lakh to Rs.1.25 lakh for every year of completed service prior to retrenchment/termination.

15. Mr. K.G.Chaudhary, learned counsel for the petitioner relies on a judgment of the Delhi High Court in **New Delhi Municipal Corporation vs. Parveen Chand Sharma** 2012(6) SLR 304 where compensation of Rs.5 lakhs was paid to the workman in lieu of reinstatement and back wages. In that case the workman had worked less than a year i.e. from 12.05.1987 to 05.03.1988 as a daily wager.

16. On the other hand, Mr. S.S.Dalal, learned counsel for the Bank refers to a judgment of a Division Bench of this Court in **LPA No.17 of 2014** in '**The Sundh Co-operative Credit and Service Society Ltd. Sundh, Tehsil Tauru vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon and another**'. This was a case where the workman had put in three years of service. He had been denied reinstatement by the Labour Court and awarded Rs.20,000/- as compensation instead of reinstatement in an award dated 28.04.2010. The Bench noticed the decisions of the Supreme Court in **BSNL vs. Bhurumal** (Supra) and **BSNL vs. Man Singh** (Supra). The Division Bench while upholding the award of

the Labour Court declining reinstatement held that a period of fourteen years had lapsed covering the period of litigation and for this reason no useful purpose would be served and instead enhanced compensation to Rs.50,000/-. While *Man Singh & Burumal* cases have been noticed in the judgment other than what has been quoted above but the Bench has not culled out the quantum of compensation given in those cases and nothing in this regard is noticeable in the order. However, in the present case reinstatement has not been denied by the Labour Court and this would make no difference if the petitioner is not alive. Even if he is dead relief is still available as it is not the case as appears to me that his L.Rs would be entitled to nothing.

17. Another aspect has to be looked into which is that there was a charge of fraud against the workman for seeking employment fraudulently for the second spell of service and this was a serious charge which went unsubstantiated before the Labour Court and, therefore, a stigma would be cast on the family for times to come as the management failed to prove its assertion from the record of the case.

18. Keeping in view the package in *Dina Nagar* case and the other cases and in view of facts of this case, I am of the view that compensation of Rs.2.5 lacs in this case is just and reasonable to be paid to the L.Rs of the deceased workman as full and final settlement of the dispute. I would order accordingly by modifying the award of the Industrial Tribunal-cum-Labour Court dated 12.07.2013 (P-6).

19. As a result of the above discussion, both the petitions are partly allowed and the award of the Labour Court is modified. Reinstatement is not possible and compensation in lieu of reinstatement will be Rs.2.5 lakhs.

The deceased has left behind a widow and two children. The amount be

paid within a period of three months from the date of the order, failing which the amount in default shall carry interest at the rate of 10% per annum till payment.

(RAJIV NARAIN RAINA)  
JUDGE

December 11, 2018  
*Sunil Devi*

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| <i>Whether speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether Reportable</i>        | <i>No</i>  |