

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

**LPA No.255 of 2016 (O&M)
in CWP No.5768 of 2013
Date of Decision : 19.02.2018**

Municipal Council Bhiwani

.... Appellant

Versus

Presiding Officer, Industrial Tribunal & anr. Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. Jagdish Manchanda, Advocate for the appellant.

B.S.WALIA, J.,

1. Challenge in the intra-court appeal is to decision dated 29.04.2015 whereby the Writ Court modified the award passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as the Tribunal) by ordering reinstatement of the writ petitioner in lieu of compensation of ₹1,70,000/-.
2. The learned Writ Court in the light of decision of Hon'ble the Supreme Court in Jasmer Singh vs. State of Haryana and another, 2015(4) SCC 458 and Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalya and others (2013) 10 SCC 324 and while holding there to be clear violation of Section 25-F of the Industrial Disputes Act, 1947 as also by taking into account 17 years service rendered by the petitioner-Workman, besides the petitioner-workman not having averred in the claim petition that he was not gainfully

employed, modified the award by directing reinstatement in lieu of compensation of ₹1,70,000/-.

3. Municipal Council, Bhiwani has come up in appeal along with an application seeking condonation of delay of 199 days in filing of the appeal inter alia on the ground that the award passed by the Tribunal is an ex parte award, the petitioner-workman had not produced any record in support of the plea that he worked from 15.07.1989 to 01.03.2006, still, the Tribunal held that he worked for the said period and answered reference in his favour. Stand is that record summoned was lost on account of shifting of office. Nevertheless, prayer is for remand of the case to the Tribunal to decide the claim after taking evidence from both sides.

4. A perusal of the award reveals the allegations that at the time of termination of services, no notice was given to the petitioner-Workman, no wages were paid in lieu of notice period nor was compensation paid under Section 25-F of the Act, principle of “Last Come First Go” was not followed. Besides, after termination of workman’s services, new engagements were made without offering re-employment to the workman in derogation of Section 25-H of the Act.

5. The Management-appellant appeared before the Tribunal through its Authorized Representative S.K.Mittal but failed to file written statement despite availing number of opportunities. Consequentially, defence of the Management-appellant was struck off vide order dated 29.07.2011. In order to corroborate his statement regarding employment with the Management for the period

15.07.1989 to 01.03.2006, the workman moved an application to summon the concerned Clerk in the office of the Management-appellant along with his service record as also the list of workers whose services had been regularized. In response thereto, Clerk from the office of the Management-appellant appeared and stated that record was not available as the same had been lost on account of shifting of the office thrice. In the circumstances, the Tribunal in the light of decision in Divisional Forest Officer (Territorial) Bhiwani versus Smt. Maya Devi and others 2011(1) SCT 644, etc drew adverse inference against the Management regarding continuous employment of the workman with the Management during the period 15.07.1989 to 01.03.2006 particularly in the light of observations of this Court in “The Divisional Forest Officer, Social Forestry Division, Bhiwani versus The Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and another, 2010 (4) RSJ 267”.

6. We have heard learned counsel for the appellant.

7. Admittedly, authorized representative of the Management, S.K.Mittal, put in appearance but failed to file written statement despite grant of number of opportunities and thereafter, even failed to put in appearance as a result of which the Management was proceeded ex-parte by the Tribunal. Main plea is that no evidence was led by the workman nor was any record available with the Management of the petitioner having been engaged, therefore, the matter be remanded to enable the parties to lead evidence.

8. Defence of the Management was struck off vide order dated 29.07.2011. Nothing has been brought to our notice that any attempt

was made by the Management to challenge the aforesaid order. The workman appeared as WW1 and tendered in evidence his affidavit as Ex.WW1/A deposing all facts on oath as pleaded in the claim statement besides moving an application for summoning the concerned Clerk from the office of the Management along with his service record and list of workers whose services had been regularized to prove that he had worked with the Management from 15.07.1989 to 01.03.2006. In response to the summons, Inderpal, Clerk, from the office of the Management appeared and stated that the concerned record was not available as the same had been lost on account of shifting of the office of the Management thrice. The learned Tribunal drew adverse inference against the Management in the light of various decisions as referred to in paragraph No. 7 above and in view thereof ordered payment of compensation of ₹1,70,000/- @ ₹10,000/- per year but declined reinstatement. Learned writ court modified award of compensation by granting reinstatement in lieu thereof.

9. Conduct of the appellant before the Tribunal goes to show beyond an iota of doubt the evasive tactics of the Management in not participating in the proceedings by not filing the written statement, eventually being proceeded ex-parte, thereafter not challenging the ex-parte order and further on summons being issued to produce the record, the concerned Clerk, making a statement that record had been lost.

10. In the circumstances, the only question before this Court in the aforementioned background is with regard to the validity of the order of the learned writ court directing reinstatement of the petitioner

workman without backwages by modifying the award of compensation only by the Tribunal. Learned counsel for the appellant has not been able to demonstrate any ground warranting interference with the order by the learned Writ Court ordering reinstatement while setting aside the award of compensation in view of 17 years service having been rendered by the workman.

11. Accordingly, finding no merit in the appeal, the same is dismissed in limine. Consequentially, application for condonation of delay in filing appeal is also dismissed.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

February 19, 2018

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Whether speaking / reasoned	:	Yes / No
Whether reportable	:	Yes / No