

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

LPA No.148 of 2018 (O&M)
in CWP No.25301 of 2014
Date of decision: 29.01.2018

Navdeep Singh.

..... Appellant

Versus

Municipal Council, Mandi Gobindgarh & anr.

..... Respondents

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

Present: Mr. D.S. Gurna, Advocate for the appellant.

B.S. Walia, J.,

[1] Intra-court appeal has been filed against order dated 26.10.2017 whereby the writ petition seeking reinstatement was dismissed but compensation payable was increased from ₹ 5000/- to ₹ 75,000/-.

[2] Appellant workman claimed reinstatement with continuity of service and full backwages on account of having worked with respondent No. 1 as Tubewell Operator from 05.01.2002 to 20.12.2002 and his services having been illegally terminated on 21.12.2002 without notice, charge-sheet, enquiry, compliance with principles of natural justice or any compensation.

[3] Respondent management took up the stand before the Labour Court that as per Government instructions, temporary employee could not be appointed, accordingly, no temporary employee was working with the respondents, that during the period the workman alleged that he had worked under the respondent management, work was given on contract to various

contractors as per DC Rate to supply labour, therefore the petition was not maintainable on account of mis-joinder and non-joinder of necessary parties.

[4] The Labour Court held that since the services of the workman were terminated without notice, charge-sheet, enquiry or payment of compensation, his termination was illegal since he had continuously worked with the respondent from 05.01.2002 to 20.12.2002 i.e. for the statutory period of more than 240 days in a year immediately preceding the date of his termination but since as per the statement of MW-1 there was no vacancy of temporary post of Tubewell Operator, therefore, the workman was not entitled to reinstatement but only compensation. Accordingly, the Labour Court while taking into account that the workman had remained in the employment of the respondents only for one year on monthly salary of ₹ 1500/- and the reference remained pending in the Court for about 10 years, held the workman entitled to compensation of ₹ 5000/- payable within 45 days of the publication of the award, failing which he was to get the compensation along with interest @ 6% p.a., w.e.f. award till realization.

[5] Learned Writ Court vide order dated 26.10.2017 enhanced the compensation from ₹ 5000/- to ₹ 75,000/- by taking into account that the workman had worked for less than one year.

[6] Appeal has been filed by the appellant workman along with an application seeking condonation of delay of 47 days in filing of the appeal.

[7] The main plea of learned counsel for the appellant is that once it was established that the workman had worked for a period of 240 days in the year preceding the date of his termination and his termination was without issuing any show cause notice, enquiry or payment of compensation, the workman was entitled to reinstatement with continuity of service and full

back wages and in the alternative, appropriate compensation especially since reinstatement was ordered in the case of similarly situated employee, Harjit Singh, vide award Annexure P-1.

[8] We have considered the submissions of learned counsel for the appellant and are of the view that for the reasons mentioned hereunder, the appeal is bereft of merit, therefore liable to be dismissed.

[9] Admittedly, the reference remained pending for a period of 10 years before the Labour Court. Award in the case of Harjit Singh was challenged by the Municipal Council, Gobindgarh, Fatehgarh Sahib by way of CWP No.15604 of 2012 whereupon the learned Writ Court while taking into account that the Municipal Council was a public institution and posts therein were required to be filled up in accordance with law by complying with the mandate of Articles 14 and 16 of the Constitution of India and said Harjit Singh, had been engaged in derogation of Articles 14 and 16 of the Constitution of India, held that Harjit Singh was not entitled to reinstatement. The learned Writ Court further observed that whether respondent Harjit Singh was engaged by a contractor or directly by the Municipal Council, was a disputed fact but assuming that the Municipal Council had engaged the services of Harjit Singh, at best he was entitled to compensation and not reinstatement since the post held by him was a public post and he had not been appointed by inviting applications from eligible candidates. The learned Writ Court also took into account that Harjit Singh's services were orally terminated on 01.6.2005 and he was out of service since then. Therefore, reinstatement did not arise in view of the judgment of Hon'ble the Supreme Court in ***Bharat Sanchar Nigam Limited vs Bhurumal (2014) 7 SCC 177***. Accordingly, taking into account

that Harjit Singh had worked for a period of close to three years, the Labour Court award was modified and Harjit Singh was held entitled to compensation of ₹ 1.5 lacs.

[10] Stand of the respondent management is that the workman was never appointed by it nor he ever worked under its control. No appointment letter was issued to him. Work was given to contractor. There was no vacancy of temporary Tubewell Operator as per Government policy. Respondent No.1 could not appoint Tubewell Operator directly. However, without going into disputed questions of fact, admittedly, the Labour Court returned a finding that there was no vacancy of temporary post of Tubewell Operator, besides, the appellant workman worked with the Municipal Council only for a period of one year on monthly salary of ₹ 1500/-. In the circumstances, the appellant is not entitled to reinstatement, particularly in view of the pendency of the matter before the Labour Court for a period of ten years and a period of close to 15 years having elapsed since termination of workman.

[11] In the light of the above as also decision of Hon'ble the Supreme Court in Bhurumal's case (supra), denial of reinstatement while enhancing compensation to ₹ 75,000/- is upheld and the appeal is dismissed in limine. Consequently, application seeking condonation of 47 days' delay in filing of the appeal is also dismissed.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

29.01.2018
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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No. |