

(125)

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

LPA No.154 of 2018 (O&M)  
in CWP No.15664 of 2012  
Date of decision: 29.01.2018

Sukhwinder Singh

..... Appellant

Versus

Municipal Council, Mandi Gobindgarh and another

..... Respondents

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

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

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**B.S. Walia, J.**

[1] Challenge in this intra-court appeal is to order dated 26.10.2017 passed by the learned Writ Court reversing the award of reinstatement without backwages by awarding compensation in lieu thereof.

[2] Claim of the workman before the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal') was that he had worked continuously with the respondent-management from 01.03.2003 to 30.09.2004 as Tubewell Operator at Tubewell Nos.11, 12, 13 and 15 on monthly salary of ₹ 2260/- and that his services were illegally terminated by the respondent-Management on 01.10.2004 without any notice, charge-sheet, inquiry or compensation and that he had been victimized due to trade union activities.

[3] The respondent-Management, on the other hand, denied relationship of employer and workman and contended that recruitment on daily wages through Municipal Council had been banned by the Government but since some work was to be executed by the Municipal Council, therefore temporary labour work was given to an independent Contractor. The workman was never engaged by the respondent-Management for the post of Tubewell Operator nor was the workman paid any salary by the Management. The Contractor had been maintaining a Log Book for purposes of record at his own level and the Municipal Council had no links with the same, therefore, the question of the termination of service of the appellant on 01.10.2004 did not arise.

[4] On the basis of evidence led by the parties, the Tribunal held that WW2 Gurwinder Pal Singh, Water Supply Supervisor of the respondent Municipal Council had proved the copy of the record as CW3 and that as per Ex.W3 the workman had worked with the respondent from 03.03.2003 to 13.07.2004 i.e. 415 days and from 05.08.2004 to 01.10.2004 i.e. 50 days, total 465 days and in the light of the position as noted above, there existed relationship of employer and employee between the parties especially since the Municipal Council had not produced record to prove that work was provided to the registered Contractor or that the Contractor was having license from the Labour Department. Besides, no resolution of the respondent Municipal Council had been brought on record vide which work of operating the tubewells was provided to the Contractor. Besides, Ex.W3 was on the letter pad of the respondent Municipal Council and contained signatures of the Executive Officer, Municipal Council, Gobindgarh admitting that as per record, the workman had worked for 465 days as detailed in Ex.W3.

[5] The Tribunal held that services of the workman had been illegally terminated in violation of Section 25-F of the Industrial Disputes Act, 1947, therefore the workman was entitled to be reinstated with continuity of service as per service conditions as applicable on the date of termination of his services. However, backwages were denied on the ground that the workman had not worked with the respondent for the period in dispute.

[6] Challenge to the award by the respondent-Municipal Council was accepted. Award of reinstatement with continuity of service was set aside by the Writ Court and the workman was held to be entitled to compensation of ₹ 1.5 lacs by observing that whether the respondent-workman was engaged by Contractor or direct by the Municipal Council, the fact remained that even if the workman was engaged directly by the Municipal Council, he, at best was entitled to compensation and not reinstatement since the post in question was a public post and could not have been filled up without inviting applications from eligible candidates. The learned Writ Court also took into account that the workman's services were orally terminated on 01.10.2004 and he was out of service since then, therefore, in view of the decision of the Hon'ble Supreme Court in **Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177**, the question of reinstatement did not arise. Accordingly, the Writ Court modified the award of the Tribunal by holding the workman to be entitled to compensation of ₹ 1.5 lacs instead of reinstatement.

[7] The order of the learned Writ Court dated 26.10.2017 has been challenged on the ground that the Municipal Council in its plea before the learned Tribunal took the stand that the workman had not been directly appointed by them and that there was no master-servant relationship

between the parties, that at no point of time, it was the case of the Municipal Council that the workman had been appointed in violation of provisions of any law and neither was the same reason for termination/retrenchment, that under the Industrial Disputes Act, 1947, there was no requirement that the workman must be appointed by means of public advertisement, that in any case compensation of ₹ 1.5 lacs was not appropriate.

[8] We have considered the submissions made by learned counsel for the appellant.

[9] Admittedly, the appellant worked for a period of approximately 1½ years. The proceedings remained pending before the Tribunal for a period of close to 08 years thereafter, before this Court for 05 years. In all, the appellant remained out of service from 01.10.2004 till date i.e. for a period of approximately 13 ½ years. The workman admittedly worked for a period of approximately 1½ years on monthly salary of ₹ 2260/-. Therefore, in view of the decision of Hon'ble the Supreme Court in Bharat Sanchar Nigam Limited's case (supra), modification of the award by the learned Writ Court by directing payment of compensation of ₹ 1.5 lacs in lieu of reinstatement with continuity of service is not found to be warranting any interference.

[10] Resultantly, finding no merit in the appeal, the same is dismissed in limine. Consequently, the 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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