

LPA No. 71 of 2019 (O&M) and other connected cases

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

**LPA No. 71 of 2019 (O&M)
Date of decision: 14.03.2019**

Charan Singh **... Appellant**

Versus

The Xen/PWD (B&R), Malerkotla, Sangrur and others
... Respondents

ii) **LPA No. 70 of 2019 (O&M)**

Santokh Singh **... Appellant**

Versus

PWD (B&R), Malerkotla and others
... Respondents

iii) **LPA No. 146 of 2019 (O&M)**

Parkash Singh (since deceased) through his legal representatives
... Appellants

Versus

PWD (B&R), Malerkotla, Sangrur and others
... Respondents

iv) **LPA No. 152 of 2019 (O&M)**

Charanjit Singh **... Appellant**

Versus

Executive Engineer, PWD (B&R), Malerkotla, and others
... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

**Present: Mr. Kulbir Singh Sekhon, Advocate,
for the appellant.**

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ARUN PALLI, J. (ORAL)

Vide this order and judgment, we shall decide a bunch of four intra-court appeals, under Clause X of the Letters Patent, as these arise out of a common judgment rendered by the learned Single Judge in CWP No. 5643 of 2013, whereby the award passed by the Labour Court was modified and rather than reinstatement, compensation was awarded to the appellant-workman.

Facts are being derived from LPA No. 71 of 2019, which arises out of CWP No. 5643 of 2013, referred to above.

In brief, the case set out by the appellant-workman before the Labour Court was that he was employed with the respondent-department as work-charge employee and was drawing ₹416/- per month, as wages before his services were brought to an end on 29.02.1984. And, since he had served for a period of one year and one month, and his services were terminated without holding any enquiry and payment of compensation, termination of his services was wholly illegal, and thus, he was entitled to reinstatement with full back wages.

The case set out by the respondent-department in defence, was that the appellant-workman was temporarily employed on a work-charged establishment for a particular project and on completion of work, he was disengaged. Thus, neither any enquiry was required to be held, nor the workman was entitled to any compensation.

Upon a consideration of the matter and the evidence on record, the Labour Court, vide its award dated 17.10.2012, concluded that as the appellant-workman had rendered service for more than 240 days in one calendar year, immediately preceding his termination, termination of his

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services was illegal, for want of compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act'). Accordingly, the workman was ordered to be reinstated with continuity of service and backwages from the date of award till he was reinstated in service.

Being aggrieved, the respondent-department assailed the award, dated 17.10.2012, before this Court vide a writ petition, referred to above, and the learned Single Judge, vide impugned order and judgment dated 15.10.2018, in reference to the decision of the Supreme Court in **Bharat Sanchar Nigam Limited Vs. Bhurumal and another, (2014) 7 SCC 177**; a decision of the Full Bench of this Court in **Municipal Council, Dina Nagar Tehsil & District Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (10) PLR 465**, as also an order of the Division Bench in **Sunil Kumar Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurdaspur and others**, rendered in LPA No. 2078 of 2014, decided on 19.11.2015, reached a conclusion that in the wake of the facts and circumstances of the matter at hands, rather than the reinstatement, it was expedient to award compensation to the workman @ ₹30,000/- per annum, for each completed year of service or part thereof. Accordingly, the writ petition was partly allowed and the award made by the Labour Court was modified. Thus, these appeals.

We had heard learned counsel for the appellant and perused the records.

Before we proceed further, it, indeed, would be expedient to refer to the conclusion recorded by the learned Single Judge, which reads thus:-

“Having considered the submissions made by learned counsel for the parties and appraisal of the record,

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this Court is of the considered view that there is no dispute on the facts that the engagement of respondent-workman was for a period of about one year in this case. After the year 1984, respondent-workman has not served the Management and as per the petitioner, they cannot be accommodated and reinstated as the Project in which they were engaged stood completed on 29.2.1984 itself. So, there is no question of reinstatement with continuity of service and back wages as per view taken by Hon`ble Apex Court in Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177. In that case, Hon`ble Apex Court observed as under:-

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.”

10. But as is the case before the Court, the respondent-workmen had served the Management for about one year and their services have been dispensed with without complying with the mandatory provisions of Section 25-F of Industrial Disputes Act, 1947 (for short “the Act”). The Court can also not ignore the fact that the respondent-workmen have not served the Management since 1.3.1984

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till date and in such like cases, payment of lump-sum compensation would be the best remedy.

11. In Municipal Council, Dina Nagar Tehsil & Distt. Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015(1) PLR 465, Hon`ble Full Bench of this Court has held that the reinstatement in service and continuity of service with back wages is not automatic, rather the Labour Courts are supposed to look into various circumstances. Hon`ble Full Bench observed as under:-

“(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.”

12. Identical matter was before a 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 were awarded compensation to the tune of Rs.30,000/- for each completed year of service.

13. Resultantly, applying the aforesaid principle to the present cases, the workmen shall be entitled to compensation @ Rs.30,000/- per annum for each completed year of service or part thereof.”

Although, termination of services of the workman was held to be

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illegal by the Labour Court for non-compliance of the provisions of Section 25-F of the Act, but what also needs to be noticed is that specific case set out by the department has been that the workman was employed on work-charged establishment and he was disengaged as soon as the project for which his services were hired was over. No doubt, the Labour Court in this regard observed that the department had failed to bring on record any concrete evidence, but the fact remains that the workman too led no evidence or placed any material on record to controvert this position. This was not his case either at any stage that the work for which his services were engaged was still in existence and those who were employed with him were still continuing in service. It is in this context that case set out by the department before the Labour Court that termination of services of the workman could not be termed as retrenchment in terms of Section 2(oo) of the Act, and rather the matter was covered by the exception thereto, i.e. clause (bb) of the Act, assumes significance. But, be that as it may, adverting to the decision of the Supreme Court in **Bhuumal (supra)**, as also of the Full Bench in **Municipal Council, Dina Nagar Tehsil & District Gurdaspur (supra)**, there is no illusion that ordinary principle of granting reinstatement with full back wages, when the termination is found to be illegal, is not applied mechanically in all cases, as the courts are required to factor in various circumstances, such as, 'nature of appointment, availability of a post, availability of work, whether the appointment was as per rules, length of service and the delay in raising the industrial dispute.' **What is the position in the matter at hands?**

Ex facie, the workman had rendered only one year and one month service before he was terminated on 29.2.1984. Not just that, he raised an industrial dispute after over five years of his termination, vide a demand

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notice dated 29.5.1989, which again was/is a crucial factor to be taken into account, while considering his claim for reinstatement. In the given situation, the fact that even earlier he had served the department with a demand notice, which was withdrawn on 14.12.1987, would hardly advance his cause. Significantly, post termination of the services of the workman, i.e. since 29.02.1984, 35 years have gone by. Thus, consideration of his claim, at this stage, for reinstatement shall not be conducive for industrial peace and harmony. Further, the Supreme Court in **Bhurumal (supra)**, had categorically observed that when it comes to the termination of a daily wager and the termination is found to be illegal owing to a procedural defect, namely, in violation of Section 25-F of the Act, consistent view of the Supreme Court has been that in such cases reinstatement with back wages is not automatic and instead the workman should be awarded monetary compensation, which would meet the ends of justice.

Thus, in the wake of the above, we are dissuaded to interfere with impugned order and judgment, dated 15.10.2018, rendered by the learned Single Judge. The appeals being devoid of merit are accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

March 14, 2019

AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: Y