

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

CWP No.15823 of 2016

Date of decision : 30.09.2019

Ran Singh (since deceased) through LR's.

....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum
Labour Court, Circle-II, Faridabad and others

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Ms. Jasneet Mehra, Advocate for the petitioner.

Mr. Ram Chander, Advocate for respondent Nos.2 to 4.

B.S. Walia, J.

1. Challenge in the writ petition is to award Annexure P/1 dated 14/09/2015 passed by the learned Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad (hereinafter referred to as 'the Tribunal) awarding compensation of ₹ 1800/- to the petitioner-workman. Prayer in writ petition is for modification of the award and for reinstatement of the petitioner in service with continuity of service and full back wages, However due to death of the petitioner during the pendency of the petition only point for consideration is the quantum of compensation payable in lieu of reinstatement and back wages.

2. Learned counsel for the petitioner contends that once it had been established that the petitioner-workman had completed 240 days of service in the 12 months preceding the date of alleged termination and the termination of the petitioner-workman was without compliance with the mandatory

provisions of Section 25 F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the petitioner was entitled to reinstatement with full back wages.

3. Learned counsel for the respondents, on the other hand, contended that the petitioner-workman had not been appointed against a sanctioned post therefore the question of reinstatement did not arise, besides, compensation of ₹ 1800/- as per entitlement under Section 25F(b) had been rightly awarded by the tribunal, therefore, the award did not warrant interference.

4. I have considered the submissions of learned counsel for the parties and am of the view that for the reasons as are recorded hereunder, the submissions of learned counsel for the respondent do not merit acceptance and the petitioner is entitled to award of lump sum compensation instead of reinstatement with back wages in view of his having completed 240 days in the 12 months preceding the date of alleged termination which was without compliance with the mandatory provisions of the Act. Section 25F stipulates precondition of payment of retrenchment compensation in the manner as stipulated therein before the order of termination is passed or at best at the same time. However, once the Tribunal arrives at a finding that the termination is in violation of the mandatory provisions of the Act the workman is entitled to either reinstatement with full or partial back wages depending upon the facts of the case or compensation in lieu of reinstatement and back wages and not merely amount on account of notice pay or retrenchment compensation.

5. Admittedly, the petitioner had worked for a period of 22 months i.e. October, 1997 to October 1999 prior to his termination. Since, the

petitioner-workman had served only for a period of 22 months and that too against the post which was not sanctioned. At this stage, it needs noting that during the pendency of the writ petition, the petitioner-workmen died on 27.07.2018 whereupon the petitioner's widow, minor daughter, two minor sons, besides parents were impleaded as LR's of the deceased petitioner vide order dated for 04.04.2019. In the circumstances, the question of reinstatement does not arise and the only point remaining for consideration is award of lump sum compensation and that too in the background of the deceased petitioner having rendered service of 22 months.

6. Hon'ble the Supreme Court in **Bhavnagar Municipal Corporation etc. vs Jadeja Govubha Chhanubha and another 2016 (14) SCC 130** i.e. a case involving a conductor who had worked from 3rd October, 1987 till 31st March, 1989 on daily wages of ₹ 24.75 per day, awarded lump sum compensation of ₹ 2,50,000/-, keeping in view the length of service as also the fact that non-payment of retrenchment compensation was sufficient to render the termination illegal, after taking into account its decision in *Mahboob Deepak vs Nagar Panchayat Gajraula and another* (2008) 1 SCC 575, *Sita Ram and Ors. vs Moti Lal Nehru Farmers Training Institute* (2008) 5 SCC 75, *Ghaziabad Development Authority and anr. vs Ashok Kumar and another* (2008) 4 SCC 261, *Jagbir Singh vs Haryana State Agriculture Marketing Board and another* (2009) 15 SCC 327, *Senior Superintendent Telegraph (Traffic) Bhopal vs Santosh Kumar Seal and others*, (2010) 6 SCC 773, *Incharge Officer and another vs Shankar Shetty* (2010) 9 SCC 126, Relevant extract of the aforementioned decision in *Bhavnagar Municipal Corporation's case* (supra) is reproduced as under :

“9. The Labour Court has, in the case at hand, placed reliance upon a Xerox copy of a certificate allegedly issued by an officer of the appellant- Corporation stating that the respondent was in the employment of the appellant-Corporation as a Conductor between 3rd October, 1987 and 31st March, 1989. While it is true that the Xerox copy may not be evidence by itself specially when the respondent had stated that the original was with him, but had chosen not to produce the same yet the fact remains that the document was allowed to be marked at the trial and signature of the officer issuing the certificate by another officer who was examined by the appellant. Strict rules of evidence, it is fairly well-settled, are not applicable to the proceedings before the Labour Court. That being so the admission of the Xerox copy of the certificate, without any objection from the appellant-Corporation, cannot be faulted at this belated stage. When seen in the light of the assertion of the respondent, the certificate in question clearly supported the respondent's case that he was in the employment of the appellant-Corporation for the period mentioned above and had completed 240 days of continuous service. That being so, non-payment of retrenchment compensation was sufficient to render the termination illegal. Inasmuch as the Labour Court declared that to be so it committed no mistake nor was there any room for the High Court to interfere with the said finding especially when the findings could not be described as perverse or without any evidence. The High Court was also justified in directing deletion of the back wages from the award made by the Labour Court against which deletion, the respondent did not agitate either before the Division Bench by filing an appeal or before us.

10. The only question that remains to be examined in the above backdrop is whether reinstatement of the respondent as a Conductor is imperative at this late stage. We say so because the appellant claims to have worked for a period of just about 18 months that too nearly three decades ago. The respondent today may be past fifty if not more. The Transport Department where he was working appears to have been wound up and transport work out sourced. That apart, this Court has in a series of decisions held that the illegality in an order of termination on account of non-payment of retrenchment compensation does not necessarily result in the reinstatement of the workman in service. This Court has, in cases where such termination is found to be illegal, directed compensation in lieu of reinstatement.

16. While awarding compensation, the host of factors, inter-alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs.50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice.”

7. Likewise in **The Manager (Factory) Maharashtra State Cooperative Marketing Federation Ltd. And anr. vs Suresh S/o Dadarao Gadge, 2015(4) SCC 542** i.e. a case involving a peon who had served on

daily wage basis with effect from 01.07.1994 till 04.03.1996 and whose termination was held to be illegal, Hon'ble the Supreme Court by noting that the workman had not been engaged by following the normal practice and was engaged by way of "back door entry" as also that the workman had worked for a period of 1½ year on daily wage basis, awarded compensation of `2 lakhs. Besides, sum of ₹ 25,000/- deposited by the appellant with the registry of Hon'ble the Supreme Court was also permitted to be withdrawn by the respondent workman in addition to the sum of ₹ 2,00,000/- awarded by way of compensation. Relevant extract of the aforementioned decision is reproduced as under :

"3. The respondent had been appointed as a peon on daily wage basis on 1st July, 1994 and was discontinued from service from 4th March, 1996, without making any payment of retrenchment compensation.

4. It is an admitted fact that the respondent had not been engaged to work by following the normal practice and thus he was engaged by way of "back door entry".

9. In view of the aforesaid circumstances, in our opinion, it would be just and appropriate not to reinstate the respondent, especially, in view of the fact that (i) the respondent had hardly worked for a period of about a year and a half on daily wage basis; (ii) his appointment was irregular and; (iii) Parbhani unit of the appellant, where the respondent was employed, has now been closed down.

10. Looking at the peculiar facts of the case, it would be just and proper to award a sum of Rs.2 lakhs (Rupees two lakhs only) by way of compensation to the respondent, It is pertinent to note that he did not lead any evidence or file any affidavit before the Labour Court stating that he was unemployed during the period of litigation. The aforestated amount of Rs.2 lakhs by way of compensation shall be paid to the respondent by the appellant within four weeks from today.

11. In addition to Rs.2 lakhs, the amount of cost deposited by the appellant with the Registry of this Court, i.e., Rs.25,000/- (Rupees twenty five thousand only), is permitted to be withdrawn by the respondent."

8. Likewise in **Bharat Sanchar Nigam Ltd. Versus Man Singh**

2012(1) SCC 558, Hon'ble the Supreme Court by taking into account that the

workmen were engaged as casual labourers on daily wage basis and their services had been terminated after approximately one year without award of retrenchment compensation as also of the workmen having raised an industrial dispute after about 5 years besides the workmen had completed more than 240 days of service, awarded monetary compensation of ₹ 2 lakhs in full and final settlement of the claim of the workmen with payment to be paid within a period 6 weeks from the date of passing of order failing which the same was to carry interest at the rate of 12% per annum. Relevant extract of the aforementioned decision is reproduced as under :

“3. The respondents workmen worked with the appellant as casual labourers on daily wages during the year 1984-85. Due to non-availability of work, their services were terminated in the year 1986. No notice or retrenchment compensation was given to them before terminating their services. After about five years, they raised an industrial dispute in the year 1991. The appropriate Government referred the dispute to the Labour Court for adjudication. The Labour Court vide its award dated 27.5.2005 ordered reinstatement of the respondents-workmen on the same post which they were holding at the time of their termination.

6. In view of the aforementioned legal position and the fact that the respondents - workmen were engaged as 'daily wagers' and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

7. Accordingly, the impugned judgment passed by the High Court as also the award dated 27.5.2005 passed by the Labour Court are set aside. We direct the appellant Bharat Sanchar Nigam Ltd. to pay Rs.2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum. ”

9. Admittedly, the deceased petitioner-workman had completed 22 months of service and was therefore, entitled to a notice under Section 25F(a) indicating the reasons for retrenchment and the period of notice having expired or wages in lieu of such notice period having been paid and secondly, the deceased workmen having been paid at the time of retrenchment, compensation equivalent to 15 days' average pay for every completed year of

continuous service or any part thereof in excess of six months. Admittedly, neither notice was given nor the wages in lieu thereof nor the retrenchment compensation was paid. Thus, the termination was void ab initio.

9. In the light of the position as noted above, as also the decisions of Hon'ble the Supreme court of India, I am of the considered view that since the deceased workman had worked for a period of 22 months prior to his termination on 15.11.1999 which was without complying with the mandatory provisions of Act or for that matter giving any notice and the petitioner having died during the pendency of the writ petition it would meet the ends of justice, if the award is modified and the LRs' of the deceased petitioner-workman are awarded a lump sum compensation of ₹ 2.5 lakh with payment to be made within a period of 2 months from the date of receipt of this order failing which the same shall be paid along with interest @ 7.5% per annum with the interest on the awarded amount being payable by the officer responsible for not disbursing the payment within the period of time as stipulated above.

September 30, 2019
ps

(B.S. Walia)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No