

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

LPA No.180 of 2016 (O&M)
Decided on : 26.03.2019

Executive Engineer, Public Health, Panipat

..... Appellant

Versus

Dinesh Kumar and anr.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Randhir Singh, Addl. AG, Haryana.

Mr.Vishal Nehra, Advocate
for respondent No.1.

Manjari Nehru Kaul, J.

CM-354-LPA-2016

This is an application for condonation of delay of 59 days in filing the appeal.

For the reasons mentioned in the application, delay of 59 days in filing the appeal is condoned.

CM stands disposed of.

Main case

This intra court appeal has been filed under Clause X of Letters Patent assailing the order dated 21.09.2015 passed by learned Single Judge.

2. Factual matrix of the case is that respondent-workman was employed as Computer Operator on 01.09.2001 in Public Health Department, Division No.1, Panipat and his services were terminated on 16.04.2004. Thereafter, on 23.04.2004 the respondent-workman issued a demand notice to the department and the matter was referred to Industrial Tribunal-cum-Labour Court (in short 'Tribunal') wherein his demand notice was considered as claim statement. The Tribunal vide award dated 09.11.2011 recorded a finding that the termination of the workman was contrary to the provisions of Section 25 F of the Industrial Disputes Act, 1947 (for brevity 'the Act') and awarded a lump sum compensation of ₹ 45,000/-. Aggrieved by the said award, the respondent-workman approached this Court by filing CWP No.4516 of 2012 with a prayer for quashing the award dated 09.11.2011 (Annexure P-2) passed by the Tribunal to the extent that he was not reinstated with all consequential benefits.

3. Learned Single Judge vide order dated 21.09.2015 allowed the writ petition by observing that the impugned award passed by the Tribunal manifestly appeared to suffer from fundamental flaws inasmuch as it had failed to ascribe the reasons to decline the relief of reinstatement and full backwages and instead only awarded a lump sum compensation of ₹ 45,000/-. Learned Single Judge also held the respondent-workman entitled to reinstatement with continuity of service. However, the backwages were restricted to 50% of the arrears from the date when the demand notice had been served on the management till the date of the

award.

4. Feeling aggrieved, the appellant-department has filed the present appeal.

5. Learned counsel for the State has submitted that the respondent-workman had not completed the requisite 240 days in the preceding 12 months from the date of alleged termination and hence, there had been no violation of Section 25-F of the Act. It was also contended that in fact respondent-workman was a daily wager and he had been called as and when there was work. It was still further submitted that there was no post of Computer Operator available in the department and hence, there was no question of reinstatement of the respondent-workman and prayed for setting aside the order passed by the learned Single Judge.

6. We have given our anxious consideration to the submissions made by learned counsel for the parties as well as material available on record.

7. To decide the issue whether appellant is entitled to compensation or reinstatement, it is relevant to reproduce Section 25-F of the Industrial Disputes Act, 1947, which is as follows:

“25-F Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice,

wages for the period of the notice;

proviso [* *]*

b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

8. A perusal of Section 25-F of the Act shows that an employee shall be terminated from service by issuing a one month's prior notice or paid compensation in lieu of such notice giving reason for his retrenchment.

9. The Apex Court in ***Anoop Sharma vs. Executive Engineer, Public Health, Division No.1, Panipat (2010) 5 SCC 497*** while dealing with the retrenchment of workman in violation of Section 25 F of the Act observed as under:

“16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of [Section 25-F](#) of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment,

compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that [Section 25-F \(a\) and \(b\)](#) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity -[State of Bombay v. Hospital Mazdoor Sabha](#) AIR 1960 SC 610, [Bombay Union of Journalists v. State of Bombay](#) (1964) 6 SCR 22, [State Bank of India v. N. Sundara Money](#) (1976) 1 SCC 822, [Santosh Gupta v. State Bank of Patiala](#) (1980) 3 SCC 340, [Mohan Lal v. Management of M/s. Bharat Electronics Ltd.](#) (1981) 3 SCC 225, [L. Robert D'Souza v. Executive Engineer, Southern Railway](#) (1982) 1 SCC 645, [Surendra Kumar Verma v. Industrial Tribunal](#) (1980) 4 SCC 443, [Gammon India Ltd. v. Niranjana Das](#) (1984) 1 SCC 509, [Gurmail Singh v. State of Punjab](#) (1991) 1 SCC 189 and [Pramod Jha v. State of Bihar](#) (2003) 4 SCC 619

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of [Section 25-F](#) of the Act. Sometimes it has been termed as *ab initio* void, sometimes as *illegal per se*, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of [Section 25-F\(a\) and \(b\)](#) has the effect of rendering the action of the employer as nullity and the employee is

entitled to continue in employment as if his service was not terminated.”

10. The submission of the learned counsel for the State qua his not completing 240 days of the service is devoid of any merit. A perusal of the award indicates that there did exist a relationship of master and servant/employer and employee between the parties and also the respondent-workman had been in continuous service of the appellant-department for 240 days, which is a pre-requisite condition under Section 25-B of the Act. The respondent-workman would be thus, rightly entitled to the benefit and protection under Section 25-F of the Act.

11. Examining the case law on the subject, it may be noticed that in the case of ***B.S.N.L. vs. Bhurumal, in Civil Appeal No.10957 of 2013, decided on 11.12.2013***, the Apex Court held that reinstatement is not the only remedy where the termination has taken place due to non-compliance of the mandatory provisions of the Act. When there is a violation of Section 25-F of the Act and payment is not made at the time of termination, compensation would be the proper remedy. However, if termination is a result of some unfair labour practice or smacks of malafides, then reinstatement can be ordered.

12. In the instant case, the manner in which the respondent-workman was terminated from service leaves no manner of doubt that it was contrary to the provisions of Section 25-F of the Act as was rightly held by the Tribunal as well as by the learned Single Judge. Once, his termination was bad then in the light of *Bhurumal's case(supra)*, learned Single Judge was right in ordering his reinstatement.

13. We are in agreement with the learned Single Judge that the Tribunal in the impugned award has maintained a stoic silence as to why the relief of reinstatement should not have been granted to the respondent-workman once it stood proved on record that the termination of the respondent-workman was against the provisions of Section 25-F of the Act.

14. It would be apposite to refer to the decision of the Apex Court in ***Tulsidas Paul vs. Labour Court (1972) 4 SCC 205(2)*** wherein it was held as under: (Tulsidas Paul case, SCC p.208 para 9)

“9. *In Hindustan Steels Ltd. vs. A.K.Roy, (1969) 3 SCC 513* we recently held, after considering the previous case law, that though the normal rule, in cases where dismissal or removal from service is found to be unjustified, is reinstatement, Industrial Tribunals have the discretion to award compensation in unusual or exceptional circumstances where the Tribunal considers or consideration of the conflicting claims of the employer on the one hand and of the workmen on the other, reinstatement inexpedient or not desirable. We also held that no hard-and-fast rule as to which circumstances would constitute an exception to the general rule can be laid down as the tribunal in each case must, in a spirit of fairness and justice and in keeping with the objectives of industrial adjudication, decide whether it should, in the interest of justice, depart from the general rule.”

15. As a sequel to the above discussion, we are of the considered opinion that the order passed by learned Single Judge was a well reasoned one and does not deserve any interference.

16. Accordingly, the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

26.03.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No