

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

LPA No.2416 of 2016 (O&M)
Decided on : 04.02.2019

Piara Lal

..... Appellant

Versus

Industrial Tribunal, Patiala & others

..... Respondents

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

Present : Ms. Sukhmani Patwalia, Advocate
for the appellant.

Mr. Pankaj Gupta, Addl. AG, Punjab.

Manjari Nehru Kaul, J.

In this intra Court appeal filed under Clause X of the Letters Patent, the appellant assails the order dated 11.07.2016 passed in CWP No.1326 of 2014 vide which the learned Single Judge partly allowed the writ petition filed by the petitioner (appellant herein).

2. Brief facts of the case, which are relevant for deciding the appeal are that the appellant joined the services of respondents No.2 and 3 as a Mali on 27.06.1997 and remained as such till 30.06.2000 when his services were terminated. Thereafter, the appellant raised an industrial dispute by serving a demand notice dated 29.12.2000. Since the conciliation proceedings failed, the matter was referred to the Labour Court, Patiala for adjudication wherein respondents No.2 and 3 pleaded that the appellant had worked for only two months and had himself left the work.

The Industrial Tribunal, Patiala (in short 'Tribunal') passed award dated 09.01.2013 (Annexure P-3) by holding that since the workman had completed 240 days of services and his services had been terminated in violation of Section 25-F of the Industrial Disputes Act, 1947 (for brevity 'the Act'), therefore, the appellant-workman was entitled to compensation amounting to ₹ 25,000/- in lieu of reinstatement with back wages. Aggrieved by the said award, the appellant approached this Court by way of CWP No.1326 of 2014.

3. Learned Single Judge vide order dated 11.07.2016 partly modified the award passed by the Tribunal by holding that since the appellant had worked as a Mali from 1997 to 2000, the compensation amount of ₹ 25,000/- awarded was less. The learned Single Judge enhanced the amount of compensation to ₹ 50,000/-. Learned Single Judge, however, did not grant reinstatement as prayed for.

4. Learned counsel for the appellant submitted that the appellant belonged to the weaker section of the society and even as per the findings of the Tribunal, he had worked for more than 3 years but despite that the meager amount awarded by the Tribunal was only marginally enhanced by the learned Single Judge. Learned counsel for the appellant further contended that no reasoning was given in the impugned orders in declining the relief of reinstatement.

5. We have heard the arguments advanced by learned counsel for the parties and perused the material available on record.

6. 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].”

7. 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. In the case in hand, the Tribunal had given the finding that the appellant was working as daily wage employee. He was neither appointed through proper procedure nor was given any appointment letter. Therefore, it was held that the petitioner-workman was not entitled to relief of reinstatement

with backwages. However, since reference remained pending for 10 years, in the interest of justice compensation of ₹ 25,000/- was awarded.

8. 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.

9. The Supreme Court in ***Management, Hindustan Machine Tools Ltd. vs. Ghanshyam Sharma, 2018 AIR (SC) 5280*** had laid down that in the absence of any evidence adduced by the workman with regard to gainful employment during termination period or not, Labour Court ought to have awarded lump sum money compensation to the workman in lieu of relief of reinstatement with back wages and continuity of service. In that regard, it was observed as under by the Apex Court:

15. *In other words, having regard to the peculiar nature of the respondent's appointment and rendering of services by him for a very short duration (just 240 days only) and with no evidence as to whether he worked for gains or not after his services came to an end in 1977, this was a fit case where the Labour Court should have awarded lump sum compensation to the respondent instead of directing his reinstatement in service with consequential benefits. The*

Labour Court was empowered to pass such order by taking recourse to the powers under Section 11-A of the Act. This has also been the view of this Court in such type of cases. (See-Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal Assistant Engineer Rajasthan Development Corporation vs Gitam Singh (2010)6 SCC 773 and Assistant Engineer, Rajasthan Development Corporation & Ors. vs. Gitam Singh (2013) 5 SCC136).

16. *In view of the foregoing discussion, we allow this appeal in part and while modifying the impugned order and the award of the Labour Court, direct the appellant to pay a sum of Rs.50,000/- in lump sum to the respondent (employee) by way of compensation in lieu of respondent's right to claim reinstatement in service."*

10. In the case in hand, there is nothing to show that the termination of the appellant smacked of malafides or was result of unfair labour practice. The relief of reinstatement, which has been prayed for, would not be justified as the services of the appellant-workman were terminated almost 19 years back i.e. in the year 2000. Hence, the order passed by the Tribunal granting compensation in lieu of reinstatement was justified.

11. Keeping in view the above discussion, we do not find any ground to interfere in the order passed by learned Single Judge and affirm the same. However, in our considered opinion, the ends of justice would be met if the compensation of ₹ 50,000/- as awarded by the learned Single Judge is enhanced to ₹ 1 lakh. Accordingly, compensation amount of ₹ 1 lakh shall be paid to the appellant-workman within a period of two months from the date of receipt of certified copy of the order, failing which

the appellant shall be entitled to get interest @ 6% per annum till the amount is paid.

12. Accordingly, the present appeal is disposed of in above terms.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

04.02.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No