

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.1062 OF 2021(O&M)

Decided on 17.11.2021

Surinder

.....Appellant

versus

Presiding Officer, Industrial Tribunal cum
Labour Court, Hisar and others

.....Respondents

CORAM HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Arvind Seth, Advocate for the appellant.

SANDEEP MOUDGIL, J

The instant Letters Patent Appeal before this Hon'ble Court has been preferred against the impugned judgment/order dated 28.07.2021, passed by the learned Single Judge of this High Court wherein the petitioner/appellant had assailed the award dated 04.10.2019 (Annexure P1), passed by the Industrial Tribunal, Hisar.

The petitioner-appellant has set forth his claim for reinstatement in service with full back wages and other consequential benefits with continuity of service and also questioned the quantum of compensation as awarded by the Tribunal to the tune of Rs.1,00,000/- in lieu of reinstatement in service for his tenure of alleged service i.e April 2010 to December 2013.

Admitted facts involved in the present Letters Patent Appeal

culminate as that the appellant was appointed as daily paid worker in April 2010 as Watchman at the godowns of Haryana Agro Industries Corporation (hereinafter called as HAIC), Fatehabad at D.C rates. On completion of the term in December 2013, the services of the appellant were dispensed with and no notice / notice pay or retrenchment compensation was given violating the provisions of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter called as ID Act).

The respondent HAIC, Fatehabad took a stand that the appellant – workman worked for the period from April 2010 to September 2010 and thereafter was under the employment of M/s Lokesh Security and Detective Agency, who engaged the workman – appellant for the period from October 2010 till October 2011.

It is also the stand of respondent – HAIC, Fatehabad that thereafter from 05.04.2012 till 15.01.2014, the workman – appellant was in engagement with a new contractor namely M/s Oscar Security and Fire Service, a service provider agency.

The respondent no.3 came up with the plea that on 03.04.2012, the workman – appellant was engaged since 05.04.2012 till 15.01.2014 for imparting duties in the premises of HAIC, Fatehabad.

The Industrial Tribunal below rejected the plea raised by HAIC,

– appellant was an employee of M/s Lokesh Security and Detective Agency from April 2010 till September 2010 on the ground that there is no evidence to prove such fact either oral or documentary to substantiate that the said agency was ever engaged by respondents no.1 and 2. It has been further recorded in findings that the workman – appellant has rendered service from April 2010 till September 2010 being an admitted position on behalf of respondents no.1 and 2 – HAIC, Fatehabad.

The finding of fact further suggests that the workman – appellant had continuously worked with HAIC, Fatehabad since 01.10.2010 till May 2011 and thereafter from July 2011 till October 2011. However, workman – appellant has failed to establish with regard to his working for the period after November 2011 till March 2012 i.e more than five months of notional break, although there is no dispute among the parties to the *lis* for the period of work rendered by the workman – appellant since April 2012 till 15.01.2014.

From the perusal of pleadings and the evidence on record, it is well established that the workman – appellant had worked for more than 240 days leading to adjudication of question in the light of said factual aspect as to what relief he is entitled on account of violation of Section 25 (F) of the ID Act.

whether the ingredients envisaged under Section 25(F) of the ID Act were complied with or not while terminating the services of the workman – appellant. Section 25(F) of the ID Act stipulate that,

“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 qua retrenchment and the period of notice had expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) xxxxx”.

On perusal of the record and after hearing the counsel for the workman – appellant, we are convinced that the respondents – employer failed to comply with the stipulations of Section 25(F) of the ID Act in as much as neither any notice for termination was served mentioning the reasons for retrenchment nor wages were paid in lieu of that notice period nor compensation as provided was paid.

The Tribunal below has also reached to the conclusion on the

did not violate the provisions of Section 25(F) of the ID Act, rather it was contractor–respondent no.3, who admitted to be the employer of the workman–appellant.

Next question which would be required to be examined is with respect to the liability of compensation, if any, to be paid to the workman–appellant. The workman–appellant has failed to controvert the contract Ex.MX between HAIC, Fatehabad and respondent no.3 and there is no immunity for the contractor to escape from the stipulations of Section 25(F) of the ID Act.

In the light of aforesaid facts and circumstances, it is safely inferred that the termination of services of workman – appellant was bad and violative of Section 25(F) of the ID Act.

The workman–appellant also contends that persons junior to him have been retained and even new recruitments were made. The workman–appellant failed to corroborate such pleading with evidence whatsoever and therefore no benefit accrues on that account for the sole reason that such vague and bald averments are not tenable in the eyes of law.

The learned Tribunal adjudicated the claim petition while awarding compensation quantifying at Rs.1,00,000/- applying the rule of thumb in consonance with various judicial pronouncements.

P1), the writ petition bearing CWP No. 13532 of 2021 came to be filed which has been dismissed upholding the correctness of the impugned award therein.

The learned Single Judge dismissed the aforesaid writ petition and refrained from interfering in the discretion so exercised by the Tribunal below.

Mr. Arvind Seth, learned counsel for the appellant vehemently argued that the workman – appellant performed his duties continuously since April 2010 till January, 2014, who was being paid the wages as per D.C rates. It was further contended that on January, 2014, the workman–appellant was verbally asked not to come on duty without assigning any reasons despite the fact that there was no complaint against his performance on duty. Mr. Seth has challenged the award dated 04.10.2019 (Annexure P1), passed by the Tribunal below and the order dated 28.07.2021 passed by the learned Single Judge in CWP No. 13532 of 2021 with the averments that the post on which the workman–appellant was working is of regular nature, on which he has completed 240 days in each year since April 2010 to January, 2014.

In the light of said facts, the termination of services on verbal orders without issuance of any notice / pay in lieu of notice or any other compensation is violative of Section 25 of the ID Act.

that persons junior to him are still working as mentioned in para 6 of the writ petition with passing references to that effect in the claim petition as well.

Having heard the counsel for the workman – appellant and perused the judgment dated 28.07.2021, passed by the learned Single Judge, it is evident on record that the workman–appellant worked from April 2010 till October 2011 with exclusion of month of July 2011 that the respondents no.2 and 3 have established on account of the fact that the respondents employer failed to bring on record any evidence to corroborate their stand that the workman–appellant was under the service of M/s Lokesh Security and Detective Agency.

Thereafter, the workman–appellant was in the employment of an outsource agency namely M/s Oscar Security and Fire Service from 05.04.2012 to 15.01.2014.

As far as plea to the effect that the persons junior to the workman–appellant have been retained and fresh employment has also been made is concerned, there is no iota of evidence and as such workman–appellant has failed to stand on his legs on this account.

It is abundantly clear and leaves no doubt in the mind of this Court that neither any notice was served nor pay in lieu of notice was paid what to talk of any compensation whatsoever making this Court to

Act.

In the light of the stand that violation of Section 25(F) of the ID Act has been established, it is to be examined as to whether reinstatement with full back wages and continuity in service is to be granted or the compensation in lieu thereof is awarded by the Tribunal below and upheld by the learned Single Judge in its order dated 28.07.2021.

It is not in dispute that the respondent no.4 namely M/s Oscar Security and Fire Service is a service provider, who engages workman as per demand for supply of man power under contract with respondents no.2 and 3 which makes it crystal clear that the man-power is engaged through the outsource agency from time to time as per the requirement on availability of work. There is no continuity of service in the case of the workman–appellant even from April 2010 to October 2011 and thereafter till April 2012.

The case of appellant–workman is also devoid of merit for the reason that he has failed to bring on record that he was not gainfully employed since January 2014.

In **“Deepali Gundu Surwase vs. Kranti Junior Adyapak & others; 2013 (4) SCT 716**; the Hon'ble Apex Court indicated the guidelines to be followed, wherein, it has been culled out that ordinarily, an employee or Workman whose services are terminated and who is desirous of getting

back wages is required to either plead or atleast make a statement before the adjudicating authority for the Court of first instance that he/she was not gainfully employed or was employed on lesser wages.

In “**Rashtrasant Tukdoji Maharaj Technical Education Sanstha, Nagpur Vs. Prashant Manikrao Kubitkar; 2018 (12) SCC 294**”, the Workman approached the labour Court after 13 years of termination whose services were terminated after having worked for 02 years and 03 months. The labour Court awarded reinstatement without back wages. The High Court affirmed the said award passed by the labour Court. The employer-Rashtrasant Tukdoji Maharaj Technical Education Sanstha, Nagpur preferred a Special Leave Petition before the Hon'ble Apex Court wherein it was observed that if, the termination is found to be contrary to Sections 25(F) and 25(G) of the ID Act, reinstatement in service is not a rule but an exception and ordinarily grant of compensation would meet the ends of justice. It modified the order passed by the labour Court and High Court while granting compensation in lieu of reinstatement without back wages.

On an earlier occasion as well, the Hon'ble Apex Court in the case of “**Bharat Sanchar Nigam Ltd. Vs. Man Singh; 2012 (1) SCC 558**”, held that reinstatement cannot be said to be justified merely on the ground that workman was engaged as daily wager and worked for more than 240 days and instead, monetary compensation would meet the ends of justice.

As far as the question of compensation so awarded by the learned Single Judge to the tune of Rs.1,00,000/- being on the lower side, is concerned, reliance has been placed on a decision dated 19.11.2015 passed in **LPA No.2078 of 2014** titled as “**Sunil Kumar Vs. Presiding Officer,**

case having identical question of law in similar facts and circumstances, the compensation in lieu of reinstatement has been calculated to be Rs.30,000/- for each completed year of service.

In the present case, since the appellant-workman has served from April 2012 to January, 2014 ie. less than three years, it has been very liberally calculated to be Rs.1,00,000/- and thus, it leaves no space for this Court to interfere with the order passed by the learned Single Judge dated 28.07.2021, wherein considerate thought has been given while allowing writ petition partly in the aforesaid terms.

Considering the aforesaid case law alongwith the facts of the present case, this Court is of the considered view that reinstatement in service is not automatic upon a finding that termination was in violation of Section 25(F) of the ID Act and in fact, compensation would meet the ends of justice. The quantum of compensation calculated @ Rs.1,00,000/- as awarded by learned Single Judge is also justified and does not warrant for any interference by this Court which is just and fair. Hence, the present appeal is devoid of any merit and the impugned order dated 28.07. 2021 passed by learned Single Judge is upheld.

Letters Patent Appeal is dismissed, without costs.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

17.11.2021
mamta

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>