

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

**LPA-1826-2018 (O&M)
DECIDED ON: 3rd NOVEMBER, 2021**

PRABHU NATH

.....APPELLANT

VERSUS

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATIALA AND
OTHERS**

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTICE GEORGE MASIH.
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Ravi Gakhar, Advocate
for the appellant.

SANDEEP MOUDGIL, J

CRM-4725-LPA-2018

The present letters patent appeal suffers from a delay of 99 days whereby the judgment dated 26.07.2018 passed by the learned Single Judge Bench, has been impugned.

Having heard the counsel for the applicant, delay of 99 days is condoned for the reasons as detailed in the present application supported by an affidavit of the applicant/appellant.

LPA-1826-2018

The instant appeal has been preferred against the impugned judgment dated 26th July, 2018 passed by the learned Single Judge whereby, the amount of compensation was enhanced from Rs.10,000/- to Rs.60,000/-, to be paid within a period of two months from the date of receipt of copy of the order, failing which it would carry interest @9% per annum from the

date of order.

The appellant-workman has raised two fold relief i.e., reinstatement with full back-wages and continuity of service or in the alternative for enhancement of amount of compensation, so granted by the learned Single Judge.

Earlier, the Labour Court, Patiala in reference under Section 2-A and Section 10(1)(c) of Industrial Disputes Act, 1947 (hereinafter referred to as Act, 1947) in its award dated 29th October, 2014 (Annexure P-1) held the appellant-workman entitled to compensation of Rs.10,000/-, which was assailed before this Court by way of filing of CWP No. 627 of 2015, which stands partly allowed vide the impugned order dated 26th July, 2018. .

The brief facts culled out and relevant for the purpose of the decision of the present appeal are that the appellant-Workman was appointed with the respondent-Corporation as Pump Operator/Beldar on 7th March, 1995 and worked as such till 2nd May, 1997.

The appellant-Workman averred that his service record was unblemished and no complaint whatsoever has ever been lodged during his above-said service tenure till his services came to be terminated on 3rd May, 1997.

The appellant-Workman raised a demand notice against the said termination alleging the same to be without any notice, charge-sheet, inquiry or compensation. It is the case putforth by the appellant-Workman that he was drawing a salary of Rs.1420/- per month at the time of termination of his services. In fact, the case of the appellant-Workman revolves around raising a demand notice on the ground that he has completed 02 years 02 months service with a salary of Rs.1420 per month

and the services have been terminated without any notice, charge sheet, inquiry or compensation and in violation of Section 25-F of the Act, 1947 as juniors to the appellant-Workman are still in service with the respondent-Corporation.

The dispute could not be resolved despite efforts and in consonance with the Act, 1947 the government referred the matter under Section 10(a)(c) of the Act, 1947 to the Industrial Tribunal, Patiala (for short 'Tribunal') vide endorsement No.6054 dated 30th November, 2009. A perusal of the reference depicts that the dispute of Workman and Management as raised reads as under:-

“Whether termination of the services of Prabhu Nath-Workman by the Management in proper and legitimate manner or not? If no, then in this regard what benefit to be given to the Workman.”

The Tribunal after taking into consideration the oral and documentary evidence on record framed the following issues on 9th July, 2010;

- 1. Whether services of workman were terminated illegally by the respondents?OPW*
- 2. If the issue No. is proved, whether the workman is entitled to consequential relief as claimed in the statement of claim?OPW*
- 3. Whether the reference is not maintainable as per preliminary objections taken by the respondent?OPM*
- 4. Relief.*

The appellant-Workman stepped into the witness box as WW1 and proved his demand notice Ex.W2, statement of claim Ex.W3 and tendered his affidavit Ex.W alongwith documents Mark-12 to Mark-290 in support of his examination-in -chief to bring on record that he was engaged as Pump Operator/Beldar on 7th March, 1995 by the respondent-Corporation and worked as such for the period from 7th March, 1995 till 2nd May, 1997.

It is further vehemently contended that his services were terminated on 3rd May, 1997 without any notice, charge sheet, inquiry or compensation. His attendance used to be marked on the muster rolls. He further asserted that his juniors are still in service and fresh appointments have been made after his termination and no opportunity was given to him when fresh appointments have been made, therefore, his termination from service amounts to unfair labour practice under the Act, 1947 and as such amounts to violation of Sections 25-F, 25-G and 25-H of the Act, 1947. The Workman took a categorical stand that he has worked for more than 240 days in the last calendar year and the respondent is an industry and the Certified Employment (Standing Orders) Act, 1946 is applicable on the respondent.

In rebuttal, the respondent-Corporation examined Satish Kumar, Junior Engineer as MW-1 and tendered his affidavit Ex.M-3 in support of his examination-in-chief stating that no person in the name of Prabhu Nath had been working during the period of March, 1995 to May, 1997. The name of the appellant-Workman does not find mention in the muster rolls produced before the Tribunal on 10th October, 2012 and instead, it was one Prabhu Dayal, who had been working with the respondent-Corporation as Beldar on daily-wages and prior to 3rd May, 1997. The said Prabhu Dayal has worked only for a total 182 days in a year.

The respondent-Corporation has further contended that Prabhu Dayal wilfully left the service after 2nd May, 1997 and did not offer himself for working with the respondent-Corporation since that day. The respondent-Corporation has put much stress on the factual aspect that since the appellant-Workman namely Prabhu Nath was never employed by the answering respondent, therefore, the question of termination of his services

as alleged does not arise at all. It has further been urged that the name of the appellant-Workman Prabhu Nath was neither mentioned in the records of the respondent-Corporation nor was ever paid any wages and finally pleaded that the claim of the Workman is liable to be dismissed.

The Tribunal has drawn a conclusion considering the examination-in-chief and cross examination of Satish Kumar (MW-1) that it was Prabhu Nath who worked with the respondent from 7th March, 1995 to 2nd May, 1997 who was recorded as Prabhu Dayal in the records of the respondent-Corporation primarily on the ground that failure of MW-1 to disclose the father's name of Prabhu Dayal gives credences to the fact that it was Prabhu Nath who actually worked with the respondent-Corporation. Had Prabhu Nath not worked with the respondent-Corporation, there was no need for him to raise a demand notice which ultimately culminated into filing of the reference.

On the issue of Whether the appellant-Workman completed 240 days in the year immediately preceding the alleged date of his termination i.e. 3rd May, 1997, the Tribunal recorded a finding that the Workman actually worked continuously from 7th March, 1996 to 2nd May, 1997 as has been admitted to be correct by Satish Kumar (MW-1). The Tribunal further held that the services of the Workman, since terminated without any notice, charge sheet, inquiry or compensation, is in violation of Section 25-F, 25-G and 25-H of the Act, 1947 and held the Workman to be entitled for a compensation to the tune of Rs.10,000/-, to be paid within 45 days from the date of publication of award, failing which he will be entitled to interest @6% per annum from the date of passing of the award till its realisation.

The Workman preferred a Civil Writ Petition No. 627 of 2015

against the above-said award dated 29th October, 2014 assailing the same on the ground that the compensation of Rs.10,000 is on the lower side and also for not giving reinstatement in service with full back-wages alongwith other consequential benefits.

The respondent-Corporation raised a similar contest as was before the Tribunal that the Workman was never appointed in the office of Municipal Corporation, Patiala. Neither any advertisement had ever been issued nor any appointment letter was issued to the Workman for appointing him as Pump Operation/Beldar along-with averment that it was only Prabhu Dayal who worked with the Corporation as Beldar on daily wages that too for a total period of 182 days with breaks in a year prior to alleged termination on 3rd May, 1997.

The respondent-Corporation in its preliminary objections took a plea that reference dated 30th November, 2009 was preferred by the Workman before the Tribunal after 12 years of alleged termination i.e. 3rd May, 1997 and in the light of such in-ordinate delay, the reference ought to have been dismissed on that ground alone. However, the Tribunal had taken a sympathetic view while awarding the compensation to the tune of Rs.10,000/- by an award dated 29th October, 2014.

A perusal of the order dated 26th July, 2018 passed by learned Single Judge, makes it abundantly clear that the Workman made a statement to the effect that though he has sought re-instatement in job with continuity of service and back wages, but would be satisfied, if, reasonable compensation is awarded to him. The Workman further took a stand that in view of judicial pronouncements made by Hon'ble Apex Court on the point of compensation, he is at least entitled to Rs.50,000 to Rs.1,00,000/- for

each completed year.

The Workman has challenged the said order dated 26th July, 2018 not only for enhancement of compensation but has also sought re-instatement in service with full back wages and continuity in service with all consequential benefits.

After hearing learned counsel for the appellant-Workman and perusal of the impugned order dated 26th July, 2018, it is evident that the workman conceded before the learned Single Judge that though, he has sought re-instatement in job and continuity of service with full back wages, but the Workman would be satisfied, if, reasonable compensation is awarded to him.

This Court has given a thoughtful consideration to the arguments advanced by learned counsel for the appellant and found the same to be bereft of merit because after giving up the claim for re-instatement and other consequential benefits before the learned Single Judge, there is no cause of action left to prefer the present Letters Patent Appeal against the impugned order dated 26th July, 2018 as far as the question of reinstatement with back wages alongwith all other consequential benefits is concerned.

It is also on record to show that the Workman has raised a demand notice on 27th August, 2009, admittedly after alleged termination from service on 3rd May, 1997 i.e. to say, after more than 12 years. The prayer of the Workman for reinstatement is also liable to be rejected on the ground of inordinate delay and laches in approaching the Court of law. This aspect of the present dispute also creates doubt on the conduct of the appellant-workman, as to how he would have survived without being

gainfully employed during these 12 years.

On the question of compensation as awarded by the learned Single Judge to the tune of Rs.60,000/-, this Hon'ble Court as well as the Hon'ble Apex Court from time to time has been adjudicating that reinstatement in service merely on account of termination of service to be bad and violative of Section 25-F of the Act of 1947 mandatorily would not amount to reinstatement back to the service particularly when there are some other weighty reasons for adopting the course of grant of compensation.

In the present case, the appellant-Workman has worked only for a duration of 2 years and 2 months and thereafter, kept mum. It was only after more than 12 years, the workman-appellant served a demand notice dated 27.08.2009, after termination of services on 03.05.1997. The case of the appellant-workman is also devoid of merit for the reason that he has failed to bring on record that he was not gainfully employed during those 12 years after termination of his services till he raised the demand notice.

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 Act, 1947, re-instatement 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 re-instatement 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 re-instatement 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.60,000/- 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, Industrial Tribunal-cum-Labour Court, Gurdaspur and others'***. In the said 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 for 02 years and 02 months, it has been rightly calculated to be Rs.60,000/-

which is ordered to be paid within a period of two months from the date of receipt of copy of the order. In case the amount of compensation is not paid within the stipulated period, it shall carry interest @9% per annum from the date of the order. Thus, it leaves no space for this Court to interfere with the order passed by the learned Single Judge dated 26.07.2018, wherein considerate thought has been given while allowing writ petition partly in the aforesaid terms.

Considering the aforesaid case laws alongwith the facts of the present case, this Court is of the considered view that re-instatement in service is not automatic upon a finding that termination was in violation of Section 25(f) of the Act, 1947 and in fact, compensation would meet the ends of justice. The quantum of compensation calculated @ Rs.30,000/- per annum 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 26th July, 2018 passed by learned Single Judge is upheld.

Letters Patent Appeal is dismissed, without costs.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

3rd NOVEMBER, 2021

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