

LPA No.705 of 2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

LPA No.705 of 2021

Date of decision : 28.07.2022

Gopal

.....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. Nishant Arya, Advocate  
for the appellant.

Mr. Pravindra S. Chauhan, Sr. DAG, Haryana.

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**AUGUSTINE GEORGE MASIH, J.**

Challenge in this appeal is to the judgment passed by the learned Single Judge, dated 27.01.2020, whereby the writ petition preferred by the appellant/workman challenging the award passed by the Industrial Tribunal-cum-Labour Court, Hisar, dated 13.03.2015, whereby the findings were returned that the termination of services of the appellant were vitiated due to non-compliance of provision of Section 25-F of the Industrial Disputes Act, 1947 and instead of granting reinstatement in service with other consequential benefits, award of just and reasonable compensation of ₹40,000/- was granted, stands dismissed.

2. It is the contention of the learned counsel for the appellant that the appellant was initially appointed as Beldar-cum-Mali in the year 1987.

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His services were terminated illegally by the Forest Department on 14.11.1998 orally, without passing any order, stating that his services are no more required. An industrial dispute was raised by the appellant leading to a Reference made by the Competent Authority. The Labour Court-cum-Industrial Tribunal, Rohtak, decided the Reference in favour of the appellant and pass an award dated 23.01.2008 ordering his reinstatement on the previous post with continuity of service and 50% back-wages. This award dated 23.01.2008 was challenged by the respondent – Forest Department by way of Civil Writ Petition No.3048 of 2009, titled as 'The Divisional Forest Officer (Territorial), Bhiwani Vs. Gopal and another', which was partly allowed by setting aside the award to the extent of granting reinstatement in service with continuity of service and 50% back-wages and instead, awarded compensation of ₹95,000/- vide judgment dated 26.05.2019. Appellant, during the pendency of the said writ petition, was reinstated in service vide order dated 17.03.2008 subject to the outcome of the writ petition and in pursuance to the provisions of Section 17-B of the Industrial Disputes Act, 1947.

After the judgment passed by the High Court, cheque No.235129, dated 31.03.2010, was paid to the appellant and he was disengaged from service w.e.f. 31.03.2011, whereafter he was verbally directed to not report for duty again without paying retrenchment compensation or complying with the mandatory provisions of the Industrial Disputes Act, 1947. It was asserted that the persons, who were appointed subsequent to the date of appointment of the appellant, were retained and therefore, an industrial dispute was raised by him. Government of Haryana

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made a Reference on 02.05.2014 which was adjudicated upon by the Industrial Tribunal-cum-Labour Court, Hisar, culminating into award dated 13.03.2015, whereby conclusion was reached that the appellant was not entitled to reinstatement in service with continuity thereof but for a lump sum compensation of ₹40,000/-.

The said award was challenged by filing the writ petition which was dismissed by the learned Single Judge vide impugned judgment dated 27.01.2020, wherein it has been observed that the appellant was reinstated in service in pursuance to the award passed by the Industrial Tribunal-cum-Labour Court, Rohtak, on 23.01.2008 with a specific rider that it would be subject to the outcome of the challenge to the said award and was provisional only. After the earlier writ petition i.e. CWP No.3048 of 2009 preferred by the respondent department having been allowed and the compensation amount, as awarded by the High Court in the writ petition been disbursed, he had no right to continue on the said post. However, since the provisions of Section 25-F had not been complied with, lump sum compensation granted to him amounting to ₹40,000/- was said to be just and reasonable compensation.

4. Learned counsel for the appellant submits that when the Labour Court had come to a conclusion that provisions of Section 25-F of the Industrial Disputes Act, 1947, have not been complied with, the said Court should have ordered his reinstatement with continuity of service. In support of this proposition, he has placed reliance upon the judgment of Hon'ble Supreme Court in **Ramesh Kumar Vs. State of Haryana** 2010 (2) SCC 543 and **Jasmer Singh Vs. State of Haryana and another** 2015 (4) SCC

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458, wherein it has been so held.

5. On the other hand, learned counsel for the State has placed reliance upon the the judgment of the Hon'ble Supreme Court in **Bharat Sanchar Nigam Limited Vs. Bhurumal** 2014 (7) SCC 177, **Assistant Engineer, Rajasthan Development Corporation Vs. Gitam Singh** 2013 (2) SCT 30 and **District Telecome Manager and others Vs. Keshab Dev** 2008 (4) SCT 33 as also the judgment of the Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil and District Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014 (4) SCT 514 to contend that the reinstatement in service with continuity thereof and all consequential benefits cannot be termed to be mandatory and automatic. It is for the Labour Court to take into consideration various aspects as to the nature of the appointment, availability of post, availability of work, length of service and the delay in raising the industrial dispute before any award of reinstatement would follow. It is contended that after the payment of the amount of ₹95,000/-, as held by this Court vide judgment dated 26.05.2009 passed in Civil Writ Petition No.3048 of 2009, titled as 'The Divisional Forest Officer (Territorial), Bhiwani Vs. Gopal and another', in pursuance whereof, compensation of an amount of ₹95,000/- has been disbursed to the workman by way of Cheque No.235129, dated 31.03.2010, against which there has been no protest while accepting the same, the period which the appellant would have spent prior to his termination i.e. 31.03.2011 would be one year. For the said period being the length of service qua the appointment, he has been granted the benefit of compensation of ₹40,000/- in lieu of reinstatement in service with continuity thereof keeping in view

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the length of service by the Labour Court which the learned Single Judge has found to be just and reasonable. On this basis, learned counsel for the State prays for dismissal of the present appeal.

6. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the judgment passed by learned Single Judge as also the award and the pleadings.

7. The facts of the case are not in dispute. The principles which have been laid down by the Full Bench of this Court in *Municipal Council, Dina Nagar's* case (supra) read as follows:-

“(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in

raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

**(iv)** The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

**(v)** The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

**(vi)** The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

**(vii)** We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”

8. Perusal of the above would show that the Labour Court, merely on the basis of the fact that the provisions of the Industrial Disputes Act,

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1947 have been violated, especially Section 25-F thereof, would not confer an automatic right for reinstatement in service to a workman. The Labour Court would instead take into consideration different aspects which would include the nature of the appointment, statutory provisions, if any, governing the appointment, length of service and delay in raising the industrial dispute before any award of reinstatement would follow.

9. Keeping in view these factors in mind, the Industrial Tribunal-cum-Labour Court, Hisar, while passing the award dated 13.03.2015 has come to a conclusion that the payment of compensation would be the proper remedy instead of reinstatement of the appellant entitling him to lump sum compensation of ₹40,000/-. The said finding being based upon the proper appreciation of the facts especially applying the principles as laid down in the judgment of the Hon'ble Supreme Court in *Bharat Sanchar Nigam Limited's* case (supra), we do not find the present appeal to be a fit case for calling interference by this Court.

10. The appeal being devoid of merit stands dismissed.

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**

**28.07.2022**  
*Harish*

**(SANDEEP MOUDGIL)**  
**JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*