

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Decided on : February 28, 2022
LPA NO. 122 OF 2006(O&M)

Ramesh Kumar JoshiAppellant

Versus

Punjab Financial Corporation, Chandigarh and anr.Respondents

LPA NO.2327 of 2017(O&M)

Punjab Financial Corporation,
Chandigarh through its Asstt. Manager (Legal)Appellant

Versus

T.S.Grewal and anotherRespondents

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

Present Mr. Ashok Kumar Nabhewala, Advocate,
for the appellant in LPA No. 122 of 2006.
Mr.Deepak Sabharwal, Advocate,
for respondent no.1 in LPA No. 122 of 2006 and
for appellant in LPA No.2327 of 2017.
Mr.K.L.Arora, Advocate
for respondent no.1 in LPA No.2327 of 2017.

SANDEEP MOUDGIL, J

CM NO. 613 of 2006 in LPA No.122 OF 2006

The present application under Section 151 CPC is for
condonation of 99 days delay in refiling the appeal.

Heard.

For the reasons mentioned in para no.2 of the application, delay of 99 days in refiling the appeal is condoned.

CM stands disposed of.

LPA No. 122 of 2006(O&M) and LPA No. 2327 of 2017(O&M)

Since the common question of law and facts are involved in these two LPAs i.e **LPA No.122 of 2006** “Ramesh Kumar Joshi v. Punjab Financial Corporation and another” and **LPA No.2327 of 2017**, “Punjab Financial Corporation v. T.S.Grewal and another”, the same are being decided by a common order, however, the facts are being taken from LPA No. 122 of 2006.

The appellant – Ramesh Kumar Joshi has assailed the order dated 08.08.2005, passed by the learned Single Judge, whereby the determination of compensation and loss of future employment was upheld to be legal and justified.

Sh.Ashok Kumar Nabhewala, learned counsel for the appellant, contends that the appellant - workman was working as Junior Clerk since 07.09.1975 with the respondent - Corporation and on the allegation of his participation in a strike, raising certain demands as a member of the Union, the respondent Corporation – Management, dismissed him from service on 30.11.1979.

Consequently, the industrial dispute was raised and vide its Award dated 19.12.1984 (Annexure P-1), the Labour Court had held against Management and ordered reinstatement of the workman with continuity in service but without back wages. The respondent – Management preferred CWP No.2584 of 1985 whereas appellant filed CWP No.3774 of 1985

seeking mandamus to grant full back wages and other benefits from back

date, wherein the learned Single Judge, vide its order dated 19.12.1990 (Annexure P-2), quashed the Award qua re-instatement of the appellant and remanded the case back to the Labour Court for determining the compensation in lieu of re-instatement and loss of future employment in the light of judgment rendered by the Hon'ble Supreme Court in the case of **O.P.Bhandari v. Indian Tourism Development Corporation Ltd. and others** reported as AIR 1987 SC page 111.

In pursuance thereto, Labour Court passed the Award dated 23.09.1994, calculating the amount of compensation, apart from considering the loss of future employment, at Rs.1,80,000/-. The said Award had been challenged before the learned Single Judge vide CWP No.4606 of 1995. The Writ petition was partly allowed by the learned Single Judge modifying the Award of Labour Court, vide order dated 04.12.2004 holding that the multiplier of 6 years' salary would be just and equitable as the petitioner joined service on 07.09.1971 and in the normal course his date of retirement would be 31.01.2005. As such the entire amount, if invested at the prevailing rate of interest, would yield approximately 40% of annual salary and allowances. Thus, he would get 40% every year, over what he would have earned by way of salary and allowances without having worked. Consequently, the learned Single Judge held the petitioner entitled to grant of compensation to the tune of Rs.3,24,000/- plus interest at the rate of 9% per annum from the date of the Award, which was ordered to be paid to him within three months from the date of decision of the writ petition, failing which the said amount would carry further interest at the rate of 12% per annum with effect from the date it becomes due, till realization. The amount, as determined by the Labour Court, if already received by the petitioner was

virtue of that order.

As the respondent – Corporation did not put in appearance when order dated 04.12.2004 was passed, therefore, it filed Review Application whereupon application was allowed and the case was listed for final hearing on 14.07.2005 and was finally decided vide judgment dated 08.08.2005, by dismissing **CWP No. 4606 of 1995 and CWP No. 1437 of 2002**, alongwith various other writ petitions involving similar questions of law, while holding as under:-

*“It is thus found that there has been a sincere effort on the part of the Labour Court in quantifying the compensation. There is no illegality or irregularity and the suggestion that instead of 3.33, the Labour Court should have applied the multiplier of 10 merely because the workmen had over 20 years of service left, is not acceptable to this Court because by doing so, it would indirectly have the effect of enforcing the Management to pay a huge amount of money to people whose prayer for reinstatement has already been held to be unwarranted by this Court thereby upholding the termination of their services. Moreover, it would also indirectly have the effect of encouraging the Labour Court to bye-pass and ignore the judgment and/or the guideline given by the Hon'ble Apex Court in **O.P.Bhandari's case (supra)**. If their services itself stood terminated, then where is the question of accepting the arguments of Mr. Nabhwala to the effect that the workmen had 26 years more to serve and would, therefore, have retired after 26 years and would, therefore, have earned a certain amount of money and so on and so forthwith? All these arguments are*

based on hypotheses and cannot be allowed after the High Court had given its seal of approval on the order of termination of their services. There is, therefore, no scope for “speculation” indulging in 'ifs' and 'buts'.

This Court is, therefore, fully satisfied with the manner in which the amount of Rs.1,80,000/- has been calculated. Consequently, both the writ petitions filed by the workmen being the instant CWP No.4606 of 1995 as well as CWP No. 1437 of 2002 are also dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

It is against this order dated 08.08.2005, passed by the learned Single Judge, the present LPA has been preferred.

Learned counsel for the appellant contends that the ratio of judgment in the case of **O.P.Bhandari's case (supra)** has not been properly appreciated by the learned Single Judge. It is further submitted on behalf of the appellant that the salary certificate of one S. Chakarvarthy, the immediate junior to the appellant - workman, has been erroneously considered as documentary evidence to determine the last pay drawn at Rs.4,500/- per month as on 01.01.1994 without calling for the record of the Labour Court. It has been vehemently stressed on behalf of the appellant that the compensation ought to have been calculated to be Rs.6,11,388/- for 24 years of wages with the multiplier of 3.33 x 3 equal to 9.99 years' salary apart from another sum of Rs.3,43,900/- along with simple interest @ 15% till the date of judgment i.e 19.12.1990, 33 days of leave and interest thereon making it a total of Rs.13,44,328/-. Another grievance raised by the petitioner is qua the arrear of pay revision w.e.f 01.01.1978. Finally he

submitted to conclude the averments that the judgment passed by the learned Single Judge is liable to be set aside on the ground that the submissions of the workman – appellant have not been properly considered while dismissing the writ petition.

On the other hand, Mr. Deepak Sabharwal, learned counsel for the respondent no.1 – Management has submitted that the last pay drawn by the workman was infact Rs.600/- and the basis of calculation of Rs.4,500/- is based on surmises and conjectures and on wrong precedents. It has been further argued on behalf of respondent no.1 – Management that considering the last pay drawn of Rs.600/-, the formula to be applied would be **600 x 12 x 3.33** which makes out to be an amount of Rs.23,976/- as against the sum of Rs.1,80,000/- so computed by the Labour Court by taking the salary component at Rs.4,500/-.

After having heard learned counsel for the parties and on the perusal of the record, it would be appetite to have a glance to the ratio laid down by Supreme Court in the judgment of **O.P.Bhandari's case (supra)**, and referred to by the learned Single Judge, which is as under:-

“ **19** *Having heard the submissions of both Mr. Nabhewala, as also of Mr. Sandhawalia, and having perused the judgment of the Hon'ble the Supreme Court of India passed in the case of **O.P.Bhandari's case (supra)**, I have given my thoughtful consideration to the emphasis laid by both the Learned Counsel to paragraphs (9) and (10) of the said judgment which reads as under:*

9. Counsel for the appellant having forcefully pressed the claim for reinstatement, has contended that in case the court is disinclined to order reinstatement, the appellant ought to be awarded the full salary and allowances, which would

have accrued to him till the date of his superannuation which is more than 8 years away. We think it would be unreasonable to award 8 years salary and allowances, as lump sum compensation in lieu of reinstatement. We consider it unreasonable because:

*i) To do so would tantamount to paying to the appellant EVERY MONTH 20% **OVER AND ABOVE** what he would have earned if he was continued in service WITHOUT DOING ANY WORK as the lump sum payment of 8 years salary invested at 15% interest (it being the current rate of interest) would yield a monthly recurring amount equivalent to his current monthly salary plus 20%.*

*ii) To do so would be tantamount to paying to him his present salary etc. plus 20% more every month **not only till his date of retirement but till his death (if he lives longer) and also to his heirs thereafter, IN PERPETUITY.***

iii) Besides, the corpus of lump sum amount so paid as compensation would remain with him intact.

Obvious it is, therefore, that the court would be conferring a 'bonanza' on him and not compensating him by accepting this formula. The submission, accordingly, deserves to be repelled unhesitatingly.

10. In our considered opinion, compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay drawn by the appellant would

be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz:-

1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances. In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:-

i) He will be getting this amount without working,

ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned,

iii) If he had been reinstated he would have earned the salary only upto the date of superannuation (up to 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation, for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

iv) The corpus of lump sum compensation would remain intact, in any event.

No doubt he will not have the advantage of further promotion, but then what are his prospects, given in the present relationship?

Besides, the chances of promotion can be set off against the risk of a departmental disciplinary proceedings. Factors (i), (ii), (iii) and (iv) are of such great significances that compensation on the basis of 50% of his annual salary and allowances is much more to his advantage. We are thus satisfied that compensation in lieu of reinstatement on the aforesaid basis is more than reasonable. We, therefore, direct that:-

I The Respondent Corporation shall reinstate the appellant with full back-wages (including usual allowances) or, at its option,

II The Respondent Corporation shall pay to the appellant:-

(1) Salary including usual allowances for the period commencing from the date of termination of his service under the impugned order till the date of payment of compensation equivalent to 3.33 years' salary including usual allowances to him.

(2) Provident Fund amount payable to the appellant and

retirement benefits computed as on the date of payment as per CI.I shall be paid to him within three months from the said date.

III The appellant shall vacate and make over possession of the premises provided to the appellant by the respondent-company before the expiry of three months from the date of this order or within none month of the day on which payment under CI.II is made, whichever is later.

IV Respondent shall pay the costs to the Appellant.

V Interim order shall stand vacated subject to the direction embodied in CI.III.

VI Since the amount is being paid in one lump sum, it is likely that the employer may take recourse to S.192 of the Income Tax Act, 1961 which provides that any person responsible for paying any income chargeable under the head "Salaries, shall, at the time of payment, deduct income tax on the amount payable at the average

rate of income computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If, therefore, the employer proceeds to deduct Income Tax as provided by S.192, we would like to make it abundantly clear that the appellant would be entitled to relief under S.89 of the Income Tax Act which provides that where by reason of any portion of assessee's salary being paid in arrears or in advance by reason of his having received in any one financial years salary for more than 12 months or a payment which under the provisions of Cl.(3) of S.17 is a profit in lieu of salary, his income is assessed at a higher rate than that it would otherwise have been assessed, the Income Tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in rule 21-A of the Income Tax Rules. The appellant is entitled to

relief under S.89 because compensation herein awarded includes salary which has been in arrears as also the compensation in lieu of reinstatement and the relief should be given as provided by S.89 of the Income Tax Act read with R 21-A of the Income Tax Rules. The appellant is indisputably entitled to the same. If any application is required to be made, the appellant may submit the same to the competent authority and the Corporation shall, through its Tax Consultant, assist the appellant for obtaining the relief.”[sic]

20. Let it be recorded that besides the above paras, the other equally important paragraphs are Paras (7) and (8) of the same judgment and they cannot be lost sight of. They read as under:-

7. It is in public interest that such undertakings or their Board of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as

team working arm-in-arm with success in the aforesaid three dimensional sense as their common goal. These factors have to be taken into account by the Court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the Court can sculpture the relief to suit the needs of the matter at and. The Court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the Court.

8. *So far as the facts of this case are concerned, we are satisfied that this is a fit case for granting compensation in lieu of reinstatement, instead of granting 'reinstatement'. For, it cannot be said that the apprehension voiced by the Respondent-Corporation as regards the negative consequences of reinstatement is unreasonable. We do not propose to pronounce on the validity or otherwise of the allegations and counter allegations made by the parties in their respective affidavits. Suffice it to say that the relations between*

the parties appear to have been strained beyond the point of no return. The Trade Union of the employees has lodged a strong protest and even held out a threat of strike, in the context of some acts of the Appellant. Such unrest among the Workmen is likely to have a prejudicial effect on the working of the undertaking which would prima facie be detrimental to the larger National interest, not to speak of detriment to the interest of concerned undertakings. We are not impressed by the submission that the Union is virtually a 'company's Union. In any case such disputed questions of facts cannot be resolved in this forum. We are prima facie satisfied that the apprehension is not ill-founded. What is more, reinstatement is perhaps not even in the interest of the appellant as he cannot give his best in the less than cordial atmosphere and it will also result in misery to him, let alone the other side. Neither the undertaking nor the appellant can improve their image or performance, or, achieve success. Infact it appears to us that both sides will be unhappy and miserable. These are valid reasons for concluding that compensation in

lieu of reinstatement and not reinstatement is warranted in the circumstances of the present case.[sic]

There is no iota of doubt considering the ratio for computing the amount of compensation as laid down in **O.P.Bhandari's case (supra)** that the compensation has to be equivalent to 3.33 years' salary (including allowances as admissible) on the basis of last pay and allowances drawn by the appellant would be reasonable amount to award in future in lieu of re-instatement while a court of equity shall always be borne in mind while quantifying the amount of compensation, the principle of “*Actus Curiae Neminem Gravabit*” (an act of Court shall prejudice none) because if one were to accept the formula of applying the multiplier of 10, the same would have the effect of “arm-twisting”, the Management by a Court of law to accede to fanciful compensation sought for by the Workmen by misconstruing orders of Court. Consequently, it would have the effect of bestowing unwarranted “Windfalls” and/or “Bonanza” on the basis of a formula evolved at the fancy of persons in whom, for reasonable and just grounds, their employers / Management had lost their trust and faith to work harmoniously with them. It cannot be lost sight that the stand of the Management is vindicated when on 19.12.1990, this Court clearly held their re-instatement to be unwarranted. It is imperative that the Court can sculpture the relief to suit the needs of the matter at hand and if satisfied that to meet the ends of justice so demanded, can certainly direct that the employer shall have the option not to re-instate provided the employer passed reasonable compensation as indicated by the Court.

The parties are *ad idem* that the matter was earlier remanded

only for the limited purpose of quantifying the compensation payable in the

light of judgment titled **O.P.Bhandari’s case (supra)**, to which both the parties have laid emphasis specifically to para 9 and 10 of that judgment, which have been reproduced on preceding pages 6 to 15.

We, after having considered the facts and law discussed hereinabove, are fully convinced that the learned Single Judge has given a due thoughtful judicious examination to the matter and applied the ratio laid in the case of **O.P.Bhandari’s case (supra)** and, therefore, no infirmity or illegality is found in the calculation while awarding compensation to the appellant, vide judgment dated 08.08.2005.

Therefore, finding the appeal, being devoid of any merit, the same is hereby, dismissed.

Since the judgment rendered in LPA No. 122 of 2006 is being upheld having found to be just and legal qua the calculation of compensation in lieu of re-instatement, the appeal preferred by the Punjab Financial Corporation being LPA No.2327 of 2017 challenging the compensation to be on the higher side also lacks merit and in view of the observations and discussions made hereinabove the same also stands dismissed.

The pending misc. applications, if any, also stand rendered as infructuous, in view of the dismissal of the main appeals.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASHI)
JUDGE

February 28, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>