

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

**LPA-1087-2018 (O&M)
DECIDED ON:18.04.2022**

MAM CHAND

.....APPELLANT

VERSUS

PRESIDING OFFICER, LABOUR COURT, AMBALA AND OTHERS

.....RESPONDENTS

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

Present: Mr. Kartar Singh Malik-I, Advocate
for the appellant.

Ms. Tanisha Peshawaria, D.A.G., Haryana.

SANDEEP MOUDGIL, J

CM-2911-LPA-2018

Prayer in this application is for condonation of delay of 81 days in
filing the appeal.

Notice of the said application was issued to the respondents.

No reply to the application has been filed despite various dates having
been given since the service was effected.

It appears that the respondents are not interested in contesting the
application for condonation of delay.

We have gone through the application for condonation of delay and
find justifiable reasons for the delay in filing the appeal as it was neither deliberate

nor intentional nor was any undue benefit being sought by the applicant/appellant by filing the present appeal beyond the period prescribed for limitation.

In the light of the above, we accept the prayer made in this application and condone the delay of 81 days in filing the present appeal.

Application stands allowed.

CM-2911-LPA-2018

Prayer in this application is for condonation of delay of 06 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 06 days in re-filing the appeal stands condoned.

CM-2911-LPA-2018

Filing of certified as well as true typed copy of impugned order dated 07.02.2018 passed by the learned Single Judge, writ petition, Annexures and other documents attached with the present LPA are dispensed with. Application stands allowed subject to just exceptions

LPA-1087-2018

1. The present intra-Court appeal before this Court has come up assailing the judgment dated 07.02.2018 passed by the learned Single Judge whereby the civil writ petition was disposed of holding the petitioner entitled to the compensation of Rs.3 lacs applying the principles laid down by the Apex Court in the case of ***“B.S.N.L. Vs. Bhurumal; 2014 (7) SCC 177.***

2. The appellant has assailed the order passed by the learned Single Judge dated 07.02.2018 contending the same to be illegal and arbitrary as far as

reinstatement has in service or the back wages have not been granted except the compensation of Rs.3 lacs. Meaning thereby, the relief sought is two fold i.e. reinstatement with back wages and continuity of service and secondly the enhancement of compensation amount of Rs.3 lacs.

3. The question before this Court for determination by way of this intra Court appeal arisen is as to whether the appellant-workman is entitled for reinstatement with back wages though admittedly having not completed 240 days during the calendar year 2005 till the date of termination of his services on 01.01.2006.

4. Earlier, the Labour Court, Ambala 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 22.04.2010 (Annexure P-4) held the appellant-workman is not entitled for any relief on the basis of finding recorded under Issue No.1, which was assailed before this Court by way of filing of CWP No.16462 of 2012, which stands disposed of vide the impugned order dated 07.02.2018 by holding that since the petitioner had worked from 1995 to 2006 and in view of the above law laid down in **B.S.N.L.'s** case (supra), the appellant is found entitled to compensation for which a sum of Rs.3 lacs had been allowed.

5. The brief facts culled out and relevant for the purpose of the adjudication of the present appeal are that the appellant-Workman was appointed with the respondent-Forest Department, Haryana on daily wage basis in the year 1995 and worked as such till 01.01.2006. On termination of his services he has raised demand notice on 19.06.2006, however, the Labour Court dismissed his reference vide its award dated 20.04.2010 by holding that he is not entitled for any relief because he did not complete 240 days in the calendar year 2005.

6. Aggrieved against the said award dated 20.04.2010, the petitioner has approached this Hon'ble Court by way of filing CWP-16462-2018 which was disposed of by the learned Single Judge vide order dated 07.02.2018 by holding that no interference is called for in respect of the award passed by the Labour Court, though, in view of the judgment in **BSNL's** case (supra), the learned Single Judge allowed compensation to the tune of Rs.3 lacs keeping in view the length of service.

7. Learned counsel for the appellant argued that he had been appointed as Beldar with the Divisional Forest Officer, Ambala City on daily wage basis since 1995 and worked continuously from 1995 to 31.12.2005 and he fulfills all the conditions therefore, is entitled for regularization of service as per the Government Policy, 2003. His services were dispensed with w.e.f. 01.01.2006 in violation of the provisions of Section 25(F) of the Act as no notice or wages in lieu thereof and retrenchment compensation was paid to him, at that time. Apart from this, some persons junior to him were retained in service in further violation of provisions of Section 25(g) of the Act of 1947 despite the fact that he has completed 240 days in the last 12 preceding calendar months.

8. Ms. Tanisha Peshawaria, Id. Deputy Advocate General, Haryana appearing on behalf of State, contested the claim by taking various preliminary objections specially to the effect that he had not worked for 240 days in the Department in a period of 01 year i.e. 2005, preceding his termination and relying upon various judgments including '**State of Karnataka and others Vs. Uma Devi and others AIR 2006 SC 1803**' prayed for dismissal of Appeal.

9. As a matter of fact, the appellant failed to lead any documentary evidence on record to establish that he had completed 240 days or more in the last

12 calendar months, except his oral statement. On the contrary, the respondent-State led documentary evidence as Ex.M1 to M3 i.e. photocopy containing the details of working days of the appellant from 12/2004 to 12/2005 and copies of muster rolls, which clearly shows that he has not completed 240 days.

10. 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.

The appellant has since not pleaded categorically that he was not gainfully employed or employed on lesser wages, therefore, is not entitled for the said relief.

11. In **“RashtrasantTukdoji Maharaj Technical Education Sanstha, Nagpur Vs. Prashant ManikraoKubitkar; 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-RashtrasantTukdoji 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.

12. 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.

13. After hearing counsel for the parties and considering the aforesaid case law and the judgment of Apex Court in **BSNL's** case (supra) alongwith the facts of the present case, we are of the considered view that re-instatement in service is not automatic even upon a finding that termination was in violation of Section 25(f) of the Act, 1947 and in fact, compensation to the tune of Rs.3 lacs, would meet the ends of justice as awarded by learned Single Judge and does not warrant for any interference by this Court which is just and fair.

14. Hence, the present appeal being devoid of any merit is dismissed and the impugned order dated 07.02.2018 passed by learned Single Judge is upheld.

15. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

18.04.2022

ps-I

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No