

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

LPA-1204-2019 (O&M)

Date of Decision: 15.03.2023

Gurmeet Singh

.....Appellant

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

**Present: Mr. Raj Kaushik, Advocate,
for the appellant.**

Mr. Abhay Pal Singh Gill, D.A.G., Punjab.

HARPREET KAUR JEEWAN, J.

CM-2628-LPA-2019

By this application, the applicant-appellant seeks condonation of delay of 67 days in re-filing the appeal.

In view of the averments made in the application, which is duly supported by an affidavit, the application is allowed and the delay of 67 days in re-filing the appeal is hereby condoned.

CM-2627-LPA-2019

By this application, the applicant-appellant seeks condonation of delay of 2 days in filing the appeal.

In view of the averments made in the application, which is duly supported by an affidavit of the appellant himself, the application is allowed and the delay of 2 days in filing the appeal is hereby condoned.

LPA-1204-2019

1. By way of the present Letters Patent Appeal, the order dated 09.01.2019 passed by the learned Single Judge in CWP-25140-2013, titled **Gurmeet Singh vs. Presiding Officer, Industrial Tribunal, Bathinda, and others**, has been assailed, whereby instead of awarding reinstatement to the appellant (hereinafter referred to as 'the workman'), respondents No. 2 to 4 (hereinafter referred to as 'the employer') were directed to pay a closure compensation in terms of Section 25-FFF of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), in addition to a sum of ₹30,000/- awarded as compensation by the Industrial Tribunal, Bathinda, (hereinafter referred to as 'the Tribunal').

2. The appellant raised an industrial dispute which was referred to the Tribunal for adjudication. The workman alleged that he has put in more than 5½ years of continuous service with respondent No. 4 as a Driver and he was paid monthly wages as per the rates approved by the Deputy Commissioner from time to time. He worked for more than 240 days in 12 calendar months preceding the date of termination on 17.06.2003 but the employer has removed him from service without complying with the mandatory provisions of Section 25-F of the Act. The employer contested the said reference raising a preliminary objection that the workman was engaged on daily wage basis and was initially engaged by the Punjab Women and Child Development and Welfare Corporation (hereinafter referred to as 'the PWCDWC') and was paid out of the contingency funds. The said Corporation has been wound up by the Government vide ordinance No. 1, dated 24.01.2001. Further, it was alleged that the workman had only worked for a period of 3½ years w.e.f. 24.10.1997 to

28.02.2001.

3. The Tribunal observed that the workman has completed 240 days in 12 calendar months preceding the date of his termination. While taking into consideration that he was a daily wage employee, he was awarded compensation of ₹30,000/- on account of his retrenchment in violation of Section 25-F of the Act.

4. The Award passed by the Tribunal was challenged by way of filing CWP-25140-2013. The learned Single Judge observed that since the termination was on account of the closing down of the Corporation, i.e. the PWCDWC and a closure compensation in terms of the Act was not paid, as such, the appellant was held entitled to the closure compensation under Section 25-FFF of the Act.

5. Assailing the said findings by learned Single Judge the learned counsel for the appellant submitted that the appellant is entitled for reinstatement since the others employees of PWCDWC have been absorbed by the State but the services of the appellant were wrongly terminated.

6. Learned counsel for the State submitted that the appellant was employed only on daily wage basis and on closure of the Corporation, his services could not have been continued, as such, he was not entitled to either the retrenchment compensation or reinstatement/absorption.

7. We have considered the aforesaid submissions and perused the paper-book.

8. It is the case of the workman that he had worked for a period of 5½ years and his services were terminated on 07.06.2003. The learned

Tribunal has rightly taken note of the admission of Smt. Amarjit Kaur (MW-1), who appeared as a witness of the employer, who has stated that the workman had worked with the employer w.e.f. 24.10.1997 to 16.06.2003 as a Driver on daily wage basis. She has also admitted the fact that the workman was being paid on DC rates on monthly basis. She has further admitted that services of the workman have been terminated on 17.06.2003. Apart from this, there is also an admission that before terminating the service of the workman, neither notice, notice pay or charge-sheet had been issued nor any compensation has been given. She has also admitted that the workman has rendered service for more than 240 days in every calendar year. She has also stated that the workman has been discharged in view of the instructions of the Government. A perusal of the Award passed by the Tribunal indicates that the employer had taken a plea that the Corporation who had employed the workman was wound up as per the instructions of the Government, as such, terminating the service of the workman.

9. We have considered the submissions made by learned counsel for the appellant with regard to his claim for reinstatement. It is an admitted fact that the workman was employed on daily wage basis by the Corporation. The Corporation was an independent legal entity and there is nothing on record to show that there were permanent posts available in the said Corporation upon which the question of reinstatement of the appellant could be considered. As such, keeping in view the facts of the present case and in view of the law laid down by the Hon'ble Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs.**

Presiding Officer, Labour Court, Gurdaspur and another 2014 (4) SCT

514, the claim for reinstatement of the appellant has been rightly declined by the learned Single Judge. The Hon'ble Full Bench in the said case has laid down the following principles for determination as to whether compensation should be awarded or reinstatement, where there is violation under Section 25-F of the Act. The said principles are reproduced as under:-

“Thus the following principles are laid down:-

(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.”

10. We have considered the quantum of compensation awarded by the learned Single Judge. The Tribunal has awarded a sum of ₹30,000/- as compensation for retrenchment of the workman without awarding the benefits under the Act. The learned Single Judge has further observed that the workman is entitled for closure benefits as described under Section 25-FFF of the Act, which reads as under:-

“25FFF. Compensation to workmen in case of closing down of undertakings.-

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub- section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to

be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

¹*[Explanation.-- An undertaking which is closed down by reason merely of--*

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

¹*[(1-A) Notwithstanding anything contained in sub- section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if--*

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1-B) For the purposes of sub- sections (1) and (1A), the expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).]

(2)Where any undertaking set- up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set- up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every ²[completed year of continuous service] or any part thereof in excess of six months.]”

11. Keeping in view the length of service which the workman has rendered, and the nature of work, we are of the considered opinion that awarding an additional sum of ₹1,00,000/- over and above the amount awarded by the learned Single Judge is justified in terms of Section 25-FFF of the Act, which would mitigate the effect of wrongful retrenchment of the appellant.

12. Accordingly, the present appeal is partly allowed and a

compensation of ₹1,00,000/- over and above the amount awarded by the learned Single Judge is ordered to be paid to the appellant and the same be deposited with the Labour Court, Bathinda, to be kept in a Fixed Deposit Receipt, till the amount is withdrawn.

13. The compensation be paid to the appellant-workman within a period of 2 months from the date of the receipt of the certified copy of this order. In case the timeline is not adhered to, the appellant shall be liable to pay interest @ 8% per annum from today.

Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

March 15, 2023
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Whether Speaking	Yes
Whether Reportable	No