

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

LPA-504-2019 (O&M)

Date of Decision: 09.02.2023

**The Executive Engineer, Public Welfare Management (Public Health)
Division (D&P) Model Town, Sonapat**

.....Appellant

Vs.

Ramesh Kumar and another

.....Respondents

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

Present: Mr. Ankur Mittal, Addl, A.G., Haryana, with
Mr. Karan Jindal, A.A.G., Haryana, for the appellant.

Mr. Ravinder Malik, Advocate, for respondent No. 1.

HARPREET KAUR JEEWAN, J.

Consideration in the present Letters Patent Appeal filed by the appellant, is to the order of the learned Single Judge in **CWP-19114-2016** titled **Ramesh Kumar vs. The Presiding Officer, Industrial Tribunal -cum-Labour Court, Panipat and another**, whereby the writ petition filed by respondent No. 1 herein, was allowed, vide order dated 18.09.2018.

2. The facts which are relevant for the disposal of the present appeal are that respondent No. 1 (hereinafter referred to as the 'workman') had worked continuously w.e.f. 01.05.1995 to 31.03.1997 as a Mali/Chowkidar with the appellant-respondent (hereinafter referred to as "the department") and his last drawn salary was ₹1548.60/- per month. His services were terminated vide order dated 01.04.1997 and he challenged the termination by way of issuing a demand notice dated 03.11.2003 under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). The appropriate Government vide order dated 20.04.2004

rejected to refer the dispute of the workman to the Labour Court for adjudication, therefore, the workman filed a Civil Writ Petition No. 12584 of 2005, titled as Ramesh Kumar vs. State of Haryana, which was allowed, vide order dated 23.07.2012 (Annexure P-1) and directions were issued to the appropriate Government to refer the dispute to the concerned Labour Court.

3. Before the Industrial Tribunal-cum-Labour Court (hereinafter referred to as 'the Tribunal'), the workman alleged that he has completed more than 240 days of the service. Hence, the respondents has violated the provisions of Section 25-F and 25-G of the Act of 1947 as such he is entitled for reinstatement with continuity of service with full back wages.

4. The appellant-respondent contested the claim, on the ground that the workman has no *locus standi* to file the present petition and the petition is not maintainable. However, it was admitted that the workman was engaged from 01.05.1995 to 31.03.1997. It was alleged that he had worked only for 184 days and he was given the retrenchment notice in December 1995 and was requested to take the retrenchment compensation amount which was refused by the workman. Since the address of the workman was not available therefore, the management could not transfer the amount of compensation by way of money order and moreover the workman never approached the department.

5. The Tribunal held that the workman failed to prove that he had completed continuous service of 240 days with the appellant-management during the last preceding 12 calendar months from the date of termination of the services. Hence, the reference was decided against the workman.

6. The workman challenged the order passed by the Tribunal and the learned Single Bench accepted the writ petition filed by the workman and ordered for reinstatement of the workman along with full back wages and continuity of service with effect from the date of issuance of demand notice, i.e. 03.11.2003. The learned Single Bench observed that the management witness (MW-1) has admitted in the cross-examination that the workman had completed 240 days in a calendar year as continuous service. The said witness has also admitted that the workman had summoned his attendance register and muster roll for the period from 01.05.1995 to 31.03.1997 but the same were not produced despite being available with the management. As such, the learned Single Judge held that there was no justified ground for the Tribunal to record the finding contrary to that. Relying upon the observations made by the Hon'ble Supreme Court in **Gopal Krishanji Ketkar vs. Mohamed Haji Latif and others** AIR 1968 SC 1413, it was observed that the burden of proving the facts was on the party which possessed the best evidence. The learned Single Judge concluded that the termination of the workman was without payment of retrenchment compensation and without following the mandatory provisions of Section 25-F of the Act of 1947 hence he is entitled for reinstatement with continuity in service.

7. Learned counsel for the appellant submitted that MW-1 has not made any admissions. He has only stated that the applicant worked for 240 days in a calendar year as per his claim made by the workman. His whole statement clearly indicates that he has not admitted the case of the workman. The management had categorically alleged in the reply which was filed before the Tribunal that the workman had only worked for 180

days till December 1995 and he was given a retrenchment notice, which he had refused to accept. There is no question of the workman having worked with the management for 240 days. Hence, the order passed by the learned Single Judge is liable to be set aside.

8. On the other hand, learned counsel for respondent No. 1-workman by referring to the reasons recorded by the learned Single Judge submitted that the relief has been rightly granted to the workman.

9. We have considered the aforesaid submission and perused the paper-book.

10. It is not disputed that the workman was a daily wage employee. He has summoned the witness of the department Sh. Pyare Lal, SDE (WW-2) to bring the record pertaining to his employment w.e.f. 01.05.1995 to 31.03.1997. A perusal of the statement of the said witness (Annexure P-4) clearly reveals that the witness has stated that no attendance register for temporary employees is maintained but the attendance of the temporary employees were marked by the J.E. and he did not bring the said record in which the J.E. used to mark the attendance. He has also not brought on record the muster roll record of the workman and only brought the cashbook and the monthly accounts. Since the said witness could not bring the said record and the management has not produced the attendance record of the workman as such, the learned Single Judge has rightly taken the adverse inference against the department and held that the onus was upon the department to produce the said record and to prove the period of employment of the workman. Reliance can be placed upon the observations made by the Hon'ble Supreme Court in **R.M.Yellatti Vs. The Assistant Executive Engineer** 2006 (1) SCC 106.

Relevant observations read as under:

“15. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact

recorded by the labour court unless they are perverse.

This exercise will depend upon facts of each case.”

11. Apart from this, the learned Single Judge has rightly taken into consideration the admission made by the witness of the management Shamsher Singh, SDE (MW-1) who has categorically admitted that the applicant has summoned the attendance register and muster roll of the period from 01.05.1995 to 31.03.1997 from the department. He has also admitted that as per the claim of the applicant, he has worked for 240 days in a calendar year. It was also admitted by the said witness that the workman was working as Mali-cum-Chowkidar with the respondent and the work of the Mali-cum-Chowkidar is still available in the department. In his affidavit, he has stated that notice of retrenchment was given in the month of 1995 but the same was verbally refused by the petitioner. Even otherwise there is no document on record to prove that retrenchment notice was ever given to the workman or that he was ever offered the retrenchment compensation as such. The learned Single Judge thus has rightly appreciated the evidence while holding that the workman has completed 240 days service in the preceding calendar year on the basis of the admission of the said witness and by taking adverse inference against the management for not producing the record which was available in their custody.

12. The workman was consistently requesting the management for permitting him to work. When he raised the demand notice dated 03.11.2003, the same was not referred by the Government for adjudication. He filed the Civil Writ Petition for pressing his demand and ultimately, on

the basis of the order passed by this Court in the said petition, the dispute was referred to the Labour Court for adjudication. The act of the appellant not permitting the workman-respondent to join his duty when he has already completed 240 days of service amounts to retrenchment as defined under Section 2 (oo) of the Act of 1947 which reads as under:-

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,--

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[(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

[\(a\)](#) voluntary retirement of the workman; or

[\(b\)](#) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[\(bb\)](#) termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill- health;]”

13. Section 25-F of the Act of 1947 provides the conditions precedent of retrenchment of a workman as per which no workman shall be retrenched by an employer until he has been paid the benefits referred in the said Section. The said Section reads as under:-

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

14. Now the question arises as to whether the relief granted by the learned Single Judge for awarding reinstatement is justified in view of the facts of the present case?

15. The Full Bench of this Court was dealing the question “*Whether a workman can be paid compensation for wrongful termination effected in violation of Section 25-F of the Industrial Disputes Act, 1947 in lieu of reinstatement?*”, laid down various principles in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014 (4) SCT 514. The same 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.”

16. While applying the ratio of the said decision to the facts of the present case, we have observed that the appellant has only worked for approximately 02 years. There has been a long litigation between the

workman and the management. As such there is no hope of having a cordial relationship between the workman and the management after having two rounds of litigation. The cordial relationship between the workman and the management is very important for any department to have smooth working as such it is not a fit case where the relief of the reinstatement should be granted. Hence, we are of the considered opinion that infringement of the rights of the workman should be redressed by way of awarding compensation instead of his reinstatement.

17. The Apex Court in Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh 2013 (1) SCR 679, while noticing that service was of 08 months, granted compensation of ₹50,000/-. Similarly, in Management, Hindustan Machine Tools Ltd. vs. Ghanshyam Sharma 2018 (18) SCC 80, for a period of 01 year, compensation of ₹50,000/- has been awarded. In K.V.Anil Mithra and another vs. Sree Sankaracharya University of Sanskrit and another 2021 (4) S.C.T. 415, while noticing the service of the retrenched employee for 04 years, lump sum monetary compensation of ₹2,50,000/- was awarded to the workman.

18. Applying the ratio of the said decisions and keeping in view the length of service rendered by the workman and the DC rates of daily wage employees, awarding of compensation for a sum of ₹1,50,000/- would be equitable and justified in this case.

19. Consequently, the appeal is allowed and the judgment passed by the learned Single Judge, dated 18.09.2018, is set aside. 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 liable to pay interest @ 8% per annum from today.

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

(G.S. SANDHAWALIA)	(HARPREET KAUR JEEWAN)
JUDGE	JUDGE
February 09, 2023	
nitin	Whether Speaking Yes
	Whether Reportable No