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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8671-2020 (O/M)

Date of decision : 21.11.2023

Jasdev Singh

..... Petitioner

Versus

HDFC Bank Limited and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ravi Gakhar, Advocate
for the petitioner.

Ms. Shruti Sharma, Advocate for
Mr. Nitin Thatai, Advocate
for respondent No. 2.

Mr. Amarinder Preet, Advocate
for respondent No. 3.

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HARSH BUNGER, J.

1. Petitioner (Jasdev Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the Award dated 06.11.2019 (Annexure P-1), passed by the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby the reference was answered in favour of the petitioner by granting compensation, amounting to Rs. 35,000/-, which includes Rs. 5,000/- as litigation expenses.

Further prayer has been made for directing respondents No. 1 and 2 Bank-HDFC Bank Limited (hereinafter referred to as respondent-

Management) to reinstate the petitioner with full back wages and continuity of service alongwith all admissible benefits during his service tenure.

2. Briefly, the petitioner raised an industrial dispute by serving a demand notice dated 05.10.2018 and upon failure of the conciliation proceedings, the dispute was referred to the Industrial Tribunal, Patiala under Section 2-A and Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication.

3. In the statement of claim, it is the case of the petitioner that he joined respondent-Management through Boparai's Martial Security Private Limited (hereinafter referred to as 'respondent No. 3') as a Gunman on 08.10.2012 and his last monthly drawn salary was Rs. 7,165/- (after deduction of EPF and ESIC). It was stated that the work and conduct of petitioner remained satisfactory. It was claimed that the petitioner worked with respondent-Management for the period from 08.10.2012 to 30.09.2018 and his services were illegally terminated on 01.10.2018 without any notice, chargesheet, enquiry or compensation. It was next claimed that new appointment was made by respondent-Management and even juniors to the petitioner were retained by respondent-Management after termination of services of the petitioner. The petitioner further claimed that the termination of services of the petitioner amounts to unfair labour practice under the 1947 Act and the same was in violation of provisions of Sections 25-F, 25-G and 25-H of 1947 Act. It was categorically stated that the petitioner had worked for more than 240 days with respondent-Management in each year as well as in the last calendar year. It was also stated that no seniority list was

supplied to the petitioner or the Union while terminating the services of the petitioner. It was stated that the post on which the petitioner was working, is a permanent post and the same is still vacant. It was stated that the petitioner has remained unemployed from the date of his termination. Accordingly, prayer for continuity of services with full back wages from the date of illegal termination and other consequential benefits was made.

4. Notice of reference was issued to respondent-Management, however, they failed to appear despite due service and they were proceeded against ex-parte on 24.04.2019. It appears that the claim of the petitioner was contested by respondent No. 3 and filed its written statement, whereupon issues were framed and the case was fixed for evidence of the petitioner.

5. In support of his claim, the petitioner himself appeared as WW1 and tendered documents Ex.W2 to Ex.W10. He also proved his demand notice as Ex.W11 and statement of claim as Ex.W12. However, on 01.11.2019, when the case was at the stage of cross examination of petitioner, none appeared on behalf of respondent No. 3 and respondent No. 3 was also proceeded against ex-parte.

6. The Tribunal below, vide its Award dated 06.11.2019 (Annexure P-1), inter alia, held as under :-

- (i) The petitioner worked with respondent-Management for 240 days in the year immediately preceding the date of his termination ;
- (ii) The petitioner was not paid any compensation, notice, notice pay in lieu of notice ; and

(iii) The services of the petitioner have been terminated in violation of the provisions of Section 25-F of the 1947 Act.

7. Considering the totality of the circumstances, the Tribunal below granted the following relief :-

“9. In the light of the above discussion, it is held that workman is not entitled to relief of reinstatement with back wages. Taking into consideration the fact that the services of workman were terminated in violation of the provisions of Section 25-F of the I.D.A. 1947 and that he worked with the respondent for the period from 08.10.2012 to 30.09.2018 and was drawing Rs. 7165/- P.M. as salary at the time of his termination, so he is granted compensation worth Rs. 30000/- (Rupees thirty thousand only) and the same is directed to be paid to the workman by the Respondents.

10. This reference is hereby answered in favour of workman and against respondents and respondents are directed to compensate the workman with Rs. 30,000/- (Rupees thirty thousand only). The workman is also held entitled to further compensation of Rs. 5000/- on account of cost of litigation and harassment. Respondents are directed to make the payment of awarded amount to the workman within 45 days of the publication of the award, failing which the workman shall be entitled to be awarded amount along with interest @ 6% per annum till realization.”

8. Against the aforesaid Award dated 06.11.2019 (Annexure P-1), the petitioner approached this Court by filing the instant writ petition.

9. Concededly, the aforesaid Award dated 06.11.2019 (Annexure P-1) has not been challenged either by respondent-Management (respondents No. 1 and 2) or by respondent No. 3 (Boparai's Martial Security Pvt. Ltd.) before this Court.

10. I have heard learned counsel for the respective parties and have also perused the paperbook with their able assistance.

11. After arguing for some time, learned counsel for the petitioner confines his prayer only with regard to enhancement of compensation awarded by the Tribunal below by submitting that the compensation awarded by the Tribunal below is on the lower side.

12. On the other hand, learned counsel for respondent-Management as well as learned counsel for respondent No. 3 have vehemently opposed the prayer of the petitioner for enhancement of compensation by submitting that the awarded compensation is justified and accordingly, prayer for dismissal of the instant writ petition has been made.

13. Hon'ble the Supreme Court in the case of B.S.N.L. Versus Bhurumal, 2014 (3) SCT 49, has held as under :-

“23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of

termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularisation (See: State of Karnataka v. Uma Devi, (2006) 4 SCC 1), Thus when he cannot claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied...”

14. In the case of Assistant Engineer, Rajasthan Dev. Corpn. and another Versus Gitam Singh, 2013 (5) Supreme Court Cases 136, the abovestated view was affirmed. It was held that reinstatement is not a rule, it depends upon various circumstances, like nature of work, manner and method of appointment, length of service etc. In view of ratio of the judgments, referred to above, grant of compensation instead of reinstatement was the proper remedy.

15. Taking note of the fact that the petitioner joined respondent-Management through respondent No. 3 as a Gunman and he worked for the period from 08.10.2012 to 30.09.2018 and his last monthly drawn salary at the time of his termination was Rs. 7,165/- and the services of the petitioner

had been terminated in violation of provisions of Section 25-F of 1947 Act, coupled with the fact that respondents No. 1 and 2 (Management) as well as respondent No. 3 have not laid any challenge to the aforesaid Award dated 06.11.2019 (Annexure P-1) and petitioner has been litigating since the year 2019; therefore, I am of the considered opinion that the compensation awarded to the petitioner is on the lower side.

16. Accordingly, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner by the Tribunal below is enhanced from Rs. 35,000/- (including litigation expenses of Rs. 5,000/-) to Rs. 2,00,000/-. Respondents No. 1 to 3 are directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 35,000/- if already paid) within a period of three months from the date of receipt/production of certified copy of this order. In case of non-payment of aforesaid amount to the petitioner within the stipulated period, the petitioner shall be entitled to claim simple interest at the rate of 6% per annum till such time payment is not made.

17. The instant writ petition is disposed of in the aforestated terms.

18. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

21.11.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No