

2023:PHHC:166326

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CM-5827-CWP-2019 in/and
CWP-8449-2001
Date of Decision: 18.10.2023

The District Red Cross Society, Hisar

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sukesh Kumar Jindal, Advocate
for the non-applicant/petitioner.

Mr. Kshitij Sharma, Advocate and
Mr. Shubhkarman S.Gill, Advocate
for applicant/respondents No.2 to 4.

HARSH BUNGER J.

CM-5827-CWP-2019:

Prayer in the present application is for fixing some actual date
of hearing in the main case.

Notice in the application.

Mr. Sukesh Kumar Jindal, Advocate, who is present in Court,
accepts notice on behalf of the non-applicant/petitioner and raises no
objection in case prayer made in the instant application is accepted.

Keeping in view the aforesaid submission made by learned
counsel for the non-applicant/petitioner as well as the reasons mentioned in
the application, the same is allowed and the main case (CWP-8449-2001) is

taken up today itself, for consideration.

Application is accordingly disposed of.

CWP-8449-2001:

1. Petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of impugned Award dated 27.02.2001 (Annexure P-14) passed by the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred as 'the Tribunal'), whereby the industrial dispute raised by the predecessor in interest of respondents No.2 to 4 herein, namely Late Shri Vinod Sharma (hereinafter to be referred as 'workman') was answered in favour of the workman and he was held entitled to reinstatement along with continuity in service and 50% back wages from the date of demand notice dated 02.12.1998 till reinstatement.

2. Briefly, the workman raised an industrial dispute, regarding termination of his services, which was referred to the Tribunal below, for adjudication.

3. It was the pleaded case of the workman that he was appointed as Clerk in the Office of petitioner-Society on 23.06.1995 at the salary of Rs.1,500/- per month. Workman claimed that his services were terminated on 31.12.1997 without issuance of any show cause notice or payment of any compensation or holding any enquiry despite the fact that he had completed more than 240 days of continuous service. Workman further claimed that after termination of his services, 2-3 more Clerks were also appointed. Therefore, workman claimed that termination of his services was wrong being against the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act'). Accordingly, workman prayed for reinstatement in service along with all the other consequential benefits.

4. The aforesaid claim of workman was contested by the petitioner-Society on the plea that he was appointed vide Memo dated 21.06.1995 and his services were regularized vide Endorsement dated 05.01.1996 in the pay scale of Rs.950-1500 plus other allowances. It was the stand of petitioner-Society that appointment of workman was against the post, which was purely temporary, and it was made clear to him that his services could be terminated at any time in case of insubordination on one month's notice on either side or on payment of one month salary in lieu thereof. It was stated that the services of workman were terminated on 31.12.1997 and payment of Rs.5,806/- was made vide Cheque, in lieu of one month's notice.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

- “(i) Whether the termination of services of Shri Vinod Sharma is justified and in order? If not along with reinstatement to what amount of relief he is entitled to?*
- (ii) Whether the respondent is not industry?*
- (iii) Whether Vinod Sharma is not workman?*
- (iv) Whether the case falls u/s 2(oo) (bb) of the Act?*
- (v) Relief.”*

6. Thereafter, both the parties led evidence in support of their case. Workman examined himself as WW-1. On the other hand, petitioner-Society examined Sh. Om Parkash Arora, Secretary as MW-1.

7. After considering the material/evidence available on record, the Tribunal below vide impugned award dated 27.02.2001 (Annexure P-14) answered the reference in favour of the workman and held him entitled to reinstatement with continuity in service and all other consequential benefits along with 50% back wages from the date of demand notice dated

02.12.1998 till reinstatement.

8. Being aggrieved against the aforesaid impugned award, the petitioner-Society has filed the instant writ petition before this Court.

9. At the time of issuance of notice of motion in this case, the execution of impugned award was stayed subject to compliance of Section 17-B of the 1947 Act. It appears that during the pendency of these proceedings, workman-Sh. Vinod Sharma expired, and accordingly, his legal representatives were substituted.

10. The Tribunal below upon considering the pleadings as well as the material available on record, returned the following findings on Issue No.1:-

“10. I have considered the above arguments and gone through the file. There is no dispute to this effect that the claimant was appointed as Lamination Clerk. Now the question is whether his services were terminated as per law laid down in Sunita Grover vs District Red Cross Society, Hisar, 1998(1) RSJ, 422. Perusal of this judgment shows that Hon'ble High Court has observed that financial position of the institution is very poor or the institution can not afford to pay regular pay scale. In case the financial position of the respondent is bad and it is difficult for the Institution to pay salary to already recruited staff the only alternative with the institution is to terminate the service of the petitioners in accordance with the appointment letter which provides that their services can be terminated by giving one month's notice or pay in lieu thereof. Officer order, Ex.W2 shows that the services of the claimant can be terminated only in case of in-subordination. The entire document is reproduced here as under:-

OFFICE ORDER:

*Shri Vinod Kumar s/o Shri Puran Chand is
hereby regularised at the post of Lamination Clerk*

w.e.f. 17.12.1995 in the pay scale of Rs.950-20-1150-E.B.-25-1500 + other allowances as applicable. This post is purely temporary and can be terminated at any time in case of insubordination on one month notice on either side or on payment of one month's salary in lieu thereof.

*Hony Secretary,
District Red Cross Society,
Hisar.*

11. On the other hand Ex.W1 shows that there is no charge of insubordination. Moreover, the decision of the Hon'ble High Court in writ petition filed by the claimant is to this effect that claimant can avail the remedy by way of reference. In my view this argument of the counsel of management has got no force.

12. In the light of the above discussion, it is amply established that the termination of the services of the claimant was neither in accordance with the conditions laid down in appointment letter as there was no charge of insubordination nor was justified and in order.

13. Consequently, this issue is hereby answered against the respondent and in favour of the claimant to the effect that termination of services of Vinod Sharma was neither in order, nor justified. He is entitled to reinstatement with continuity and all other consequential service benefits along with 50% back wages from the date of his demand notice dated 2.12.1998 till reinstatement.”

A perusal of the above extracted findings would reveal that the post against which the workman was appointed was purely temporary and the same could have been terminated at any time in case of insubordination on one month's notice or on payment of one month's salary in lieu thereof. Apparently, there was no charge of insubordination against the workman and in absence thereof, termination of his services by the petitioner-Society by making payment of one month salary, has been held to be bad.

11. Learned counsel for the petitioner-Society has been unable to show as to how the findings returned by the Tribunal on Issue No.1 was bad, more so when there was no charge of insubordination against the deceased-workman; and in the absence of same, no fault can be found with the findings returned by the Tribunal below.

12. Although, Tribunal below while answering the reference in favour of the workman held that his termination was bad and accordingly he was held entitled to reinstatement with other consequential benefits vide award dated 27.02.2014 (Annexure P-14), however, execution of the said award was stayed by this Court, subject to compliance of Section 17-B of the 1947 Act. Further, during pendency of the writ proceedings, the workman has expired, therefore, the crucial issue for consideration is regarding the relief to which the legal representatives of deceased-workman would be entitled to.

13. At this stage, learned counsel for the petitioner-Society submitted that even though the termination of the deceased employee has been held to be bad, being contrary to the terms of his appointment, and not justified, however, considering the fact that the deceased employee was working on a purely temporary post, therefore, while placing reliance upon the judgment of the Hon'ble Apex Court in the case of "***Hari Nandan Prasad and another v. Employer I/R to Management of Food Corporation of India and another***", 2014 (7) SCC 190 as well as in the case of "***Bharat Sanchar Nigam Limited v. Bhurumal***", 2014 (7) SCC 177, it is submitted that instead of reinstatement, one-time compensation ought to have been granted to the deceased employee. It is also submitted that in the peculiar facts and circumstances of this case, especially when the workman has

already expired, the relief of reinstatement granted to the deceased workman cannot be sustained.

14. I have carefully perused the judgment in the case of ***Hari Nandan Prasad*** (supra) as well as in the case of ***Bharat Sanchar Nigam Limited*** (supra).

In both the judgments, Hon'ble Apex Court was pleased to hold that if workman was working as daily-wager or purely as temporary employee then reinstatement should not be granted and one time compensation should be paid.

15. Undisputedly, in the present case, deceased employee (Vinod Kumar) was working as Lamination Clerk, which was a purely temporary post and he worked from 23.06.1995 to 31.12.1997. Moreover, considering the fact that employee (Vinod Kumar) has already expired, therefore, the relief of reinstatement granted to him cannot be otherwise sustained.

16. Considering the totality of circumstances, especially the fact that the termination of deceased employee occurred more than 25 years ago and he had been litigating with the petitioner-Society since the year 1998 and he expired during the pendency of this litigation, therefore, in my considered opinion, award passed by learned Tribunal below should be modified to the extent that instead of "*reinstatement with continuity and other consequential service benefits alongwith 50% back wages*" granted to deceased workman; his legal heirs should be paid one time compensation. In my considered view, interests of justice would be met if a lumpsum amount of Rs. 3,50,000/- is paid to the legal heirs of deceased workman

(Vinod Kumar). Therefore, impugned award dated 27.02.2001 (Annexure P-14) stands modified to the aforestated extent. If compensation is not paid within 90 days from date of receipt/production of this order, the legal heirs of deceased workman (Vinod Kumar) shall also be paid the interest at the rate of 6% per annum from today till the actual payment is made.

17. The present petition is accordingly disposed of in aforestated terms.

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

18.10.2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No