

Sr.No.203

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.1346 of 2019(O&M)
Date of Decision:24.02.2023

Municipal Council Gobindgarh, Fatehgarh Sahib
.....Appellant

versus

Industrial Tribunal Patiala and another
.....Respondents

2. LPA No.1347 of 2019(O&M)

Municipal Council, Gobindgarh Fatehgarh Sahib
.....Appellant

Versus

Industrial Tribunal, Patiala and another
.....Respondents

3. LPA No.1348 of 2019(O&M)

Municipal Council, Gobindgarh Fatehgarh Sahib
.....Appellant

Versus

Industrial Tribunal, Patiala and another
.....Respondents

4. LPA No.1349 of 2019(O&M)

Municipal Council, Mandi Gobindgarh
.....Appellant

Versus

Navdeep Singh and another
.....Respondents

5. LPA No.1350 of 2019(O&M)

Municipal Council, Gobindgarh Fatehgarh Sahib
.....Appellant

Versus

Industrial Tribunal, Patiala and another

.....Respondents

6.

LPA No.1354 of 2019(O&M)

Municipal Council, Mandi Gobindgarh, District Fatehgarh Sahib

.....Appellant

Versus

Jagtar Singh and another

.....Respondents

7.

LPA No.1357 of 2019(O&M)

Municipal Council, Mandi Gobindgarh

.....Appellant

Versus

Rangeela and another

.....Respondents

**CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan**

Present: Mr. TVS Lehal, Advocate
for the appellant.

Mr. Sandeep S.Majithia, Advocate
for respondent No.2 in LPA No.1346 of 2019 and
LPA No.1350 of 2019.

Mr. A.P.Singh, Advocate
for respondent No.2 in LPA No.1354 of 2019.

Harpreet Kaur Jeewan, J.

CM No. 2952-LPA-2019 in LPA No. 1347 of 2019,
CM No. 2954-LPA-2019 in LPA No. 1348 of 2019,
CM No. 2956-LPA-2019 in LPA No. 1349 of 2019,
CM No. 2958-LPA-2019 in LPA No. 1350 of 2019,

CM No. 2976-LPA-2019 in LPA No. 1354 of 2019,
CM No. 2986-LPA-2019 in LPA No. 1357 of 2019

Application for condonation of delay of 306 days in filing the appeal is allowed, in view of the averments made in the application, duly supported by an affidavit. Delay for the said period stands condoned.

CM No. 2953-LPA-2019 in LPA No. 1347 of 2019,
CM No. 2955-LPA-2019 in LPA No. 1348 of 2019,
CM No. 2957-LPA-2019 in LPA No. 1349 of 2019,
CM No. 2959-LPA-2019 in LPA No. 1350 of 2019,
CM No. 2977-LPA-2019 in LPA No. 1354 of 2019,
CM No. 2987-LPA-2019 in LPA No. 1357 of 2019

Applications for condonation of delay in refiling the appeals for the period ranging from 215 days to 306 days are allowed, in view of the averments made in the applications, duly supported by affidavits. Delay for the said period stands condoned.

LPA Nos.1347 to 1350, 1354 and 1357 of 2019

1. All the aforesaid letter patent appeals i.e. LPA No.1346 of 2019, LPA No.1347 of 2019, LPA No.1348 of 2019, LPA No.1349 of 2019, LPA No.1350 of 2019, LPA No.1354 of 2019 and LPA No.1357 of 2019 are taken up together as common question of law is involved in all these cases.

2. In **LPA No.1346 of 2019** the workman-Ravi Kumar respondent No.2(hereinafter referred to as “the workman”) alleged that he worked from 12.09.2002 to 14.09.2004 as a tubewell operator with the appellant-Municipal Council, Gobindgarh, Fatehgarh Sahib (hereinafter referred to as “the management”) and his services were orally terminated w.e.f. 15.09.2004 without extending any benefit under the Act. His last drawn salary was Rs.2260/- per month. His attendance was fully marked in the Log Book but his services were illegally terminated by the management

on 19.05.2004 without issuance of any notice, chargesheet; without conducting any inquiry and without payment of compensation.

The workman issued a demand notice dated 27.07.2005, the conciliation proceedings failed as such and the dispute was referred to the Labour Court, Patiala whereby the appellant contested the said Industrial Dispute and ultimately, the Tribunal passed the award dated 19.01.2012 holding that the workman is entitled to be reinstated in continuation of service but without granting any back wages.

The management challenged the order passed by the Tribunal and the learned Single Bench modified the award passed by the Tribunal by holding that the question of reinstatement does not arise in view of the judgments passed by the Hon'ble Supreme Court of India in ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and held that the workman in CWP No.15631 of 2012 is entitled to compensation of Rs.1.5 lakh which is to be paid within a period of three months from the date of the said order and further held that the workman shall be entitled to the interest @6% per annum from the date of the said order if the compensation is not paid within three months.

The management has challenged the said order dated 26.10.2017 passed by the learned Single Judge in CWP No.15631 of 2012 by way of filing the present Letters Patent Appeal.

2.1. In **LPA No.1347 of 2019** the workman-Harjit Singh alleged that he worked from 01.07.2002 to 31.05.2005 as a tubewell operator with the appellant-Municipal Council, Gobindgarh, Fatehgarh Sahib and his services were orally terminated w.e.f. 01.06.2005 without extending any benefit under the Act. The award passed by the Tribunal was modified by the learned Single Judge by awarding him compensation to the tune of

Rs.1.5 lakhs for infringement of his rights by way of passing the impugned order dated 26.10.2017 in CWP No.15604 of 2012. The findings of the said order have been assailed by the appellant by way of filing LPA No.1347 of 2019.

2.2. In **LPA No.1348 of 2019** the workman-Balwinder Kumar alleged that he worked from 27.04.2003 to 31.05.2005 as a tubewell operator with the appellant-Municipal Council, Gobindgarh, Fatehgarh Sahib and his services were orally terminated w.e.f. 01.06.2005 without extending any benefit under the Act. The award passed by the Tribunal was modified by the learned Single Judge by awarding him compensation to the tune of Rs.1.5 lakhs for infringement of his rights by way of passing the impugned order dated 26.10.2017 in CWP No.15814 of 2012. The findings of the said order have been assailed by the appellant by way of filing LPA No.1348 of 2019.

2.3. In **LPA No.1349 of 2019** the workman-Navdeep Singh alleged that he worked from 05.01.2002 to 20.12.2002 as a tubewell operator with the appellant-Municipal Council, Mandi Gobindgarh, Fatehgarh Sahib and his services were terminated on 21.12.2002 without extending any benefit under the Act. The award passed by the Tribunal was modified by the learned Single Judge by awarding him compensation to the tune of Rs.75,000/- for infringement of his rights by way of passing the impugned order dated 26.10.2017 in CWP No.25301 of 2014. The findings of the said order have been assailed by the appellant by way of filing LPA No.1349 of 2019.

2.4. In **LPA No.1350 of 2019** the workman-Sukhwinder Singh alleged that he worked from 01.03.2003 to 30.09.2004 as a tubewell operator with the appellant-Municipal Council, Gobindgarh, Fatehgarh

Sahib and his services were orally terminated w.e.f. 01.10.2004 without extending any benefit under the Act. The award passed by the Tribunal was modified by the learned Single Judge by awarding him compensation to the tune of Rs.1.5 lakhs for infringement of his rights by way of passing the impugned order dated 26.10.2017 in CWP No.15664 of 2012. The findings of the said order have been assailed by the appellant by way of filing LPA No.1350 of 2019.

2.5. In **LPA No.1354 of 2019** the workman-Jagtar Singh alleged that he worked from 04.06.2000 to 18.12.2002 as a tubewell operator with the appellant-Municipal Council, Gobindgarh, Fatehgarh Sahib and his services were orally terminated w.e.f. 19.12.2002 without extending any benefit under the Act. The award passed by the Tribunal was modified by the learned Single Judge by awarding him compensation to the tune of Rs.1.5 lakhs for infringement of his rights by way of passing the impugned order dated 26.10.2017 in CWP No.15604 of 2012. The findings of the said order have been assailed by the appellant by way of filing LPA No.1354 of 2019.

2.6. In **LPA No.1357 of 2019** the workman-Rangeela alleged that he worked from 02.05.2002 to 14.09.2004 as a tubewell operator with the appellant-Municipal Council, Mandi Gobindgarh, Fatehgarh Sahib and his services were orally terminated w.e.f. 15.09.2004 without extending any benefit under the Act. The award passed by the Tribunal was modified by the learned Single Judge by awarding him compensation to the tune of Rs.1.5 lakhs for infringement of his rights by way of passing the impugned order dated 26.10.2017 in CWP No.22046 of 2013. The findings of the said order have been assailed by the appellant by way of filing LPA No.1357 of 2019.

3. The facts taken from the LPA No.1346 of 2019 arising out of the decision of the learned Single Judge dated 26.10.2017 in CWP No.15631 of 2012 titled as Municipal Council, Gobindgarh, Fatehgarh Sahib vs. Industrial Tribunal, Patiala and another are hereby referred for the purpose of discussion.

4. Learned counsel for the appellant-management has submitted that there was no master-servant relationship between the parties. The appellant council being government agency cannot engage any worker without prior permission from the Director Local Bodies. The appellant has specifically pleaded before the Tribunal and also raised similar argument before the learned Single Judge but these submissions were never considered. It is further submitted that the appellant has never paid any salary to respondent No.2(workman) at any point of time. The salary of all the employees of Municipal Council is subject to pre-audit by the Audit Department. The evidence produced before the Tribunal was neither considered by the Tribunal nor by the learned Single Judge. Since there was no master-servant relationship between the management and workman, therefore, order passed by the learned Single Judge is liable to be set aside.

5. On the other hand, learned counsel for respondent No. 2, referring to the reasons recorded by the Tribunal and by learned Single Judge submitted that the order has been rightly passed by the learned Single Judge.

6. We have considered the aforesaid submissions and perused the available record. Since the relationship between the employer and employee was denied by the appellant, the onus was upon the workman to prove the said relationship. The appellant-management has taken a plea

that the work for operation of tubewell was given to the Contractor. MW-1 Gurminder Pal Singh, Water Supply Supervisor, MC Mandi, Gobindgarh has been examined by the management to prove the same. He brought the original registers from the office of the appellant pertaining to the relevant period and testified before the Tribunal that the appellant has made an entry in the office register of a contract regarding engaging of a labour for Tubewell w.e.f., 26.03.2002 to 21.06.2002: and w.e.f., 01.09.2002 to 20.04.2003. He proved the copy of the said order as Ex:M1 and M2. However, the said witness could not bring the name of the contractor on record. Even in his cross-examination, the witness could not tell the name of the Contractor. Though, he has submitted that log book was maintained by the Municipal Council, but even the said log book was not produced. Even the appellant has not placed on record any resolution whereby the work of operation of the Tubewell owned by the appellants was given on contract basis.

7. Contrary to that, the testimony of the appellant (Annexure P-4) indicates that he has testified on oath that he worked with the respondent as a Tubewell Operator w.e.f. 12.09.2002 to 14.09.2004 and received the salary @Rs.2260/- per month. He has categorically stated that at the time of his termination on 15.09.2004, he worked at tubewell No. 6, 10, 11, 12 and 13. His services have been illegally terminated. The workman has also placed on record a letter dated 22.10.2008 issued by the Executive Officer, Nagar Council, Gobindgarh (Annexure P-6) whereby it has been certified that the workman Ravi Kumar has worked on tubewells w.e.f. 04.05.2003 to 01.07.2004 (308 days) and w.e.f. 25.07.2004 to 29.09.2004 (62 days), as per the log book. The relevant portion of the said document is reproduced as under:-

“Labour was deputed on tubewells of Municipal Council through contractors at D.C rate after calling tenders. In which Sh. Ravi Kumar has worked on the tubewells on the following days, as per record of log book.

1. Dated 4.5.2003 to 1.7.2004 (308 days)
2. Dated: 25.7.2004 to 29.9.2004 (62 days)

Sd/-

Executive Officer
Nagar Council Gobindgarh“

8. In the absence of a documentary proof that the work of operation of tubewells was given on contract, a mere denial of relationship of workman and employer by the appellant would not negate the contents of the aforesaid certificate which has been issued by an officer of the appellant. As such we do not find any error in the findings arrived at by the learned Single Judge and adverse inference has been rightly taken by the Tribunal as well as by the learned Single Judge while holding that the relationship of employer and employee existed between the parties.

9. In view of the factual position on record, it is not disputed that the workman has completed 240 days of service in the preceeding 12 months when his services were terminated. However, he was neither appointed on a permanent post nor the appointment had been made by giving a public notice, as such though the termination of the services of the workman amounts to retrenchment under Section 2(oo) of the Industrial Disputes Act 1947 (hereinafter referred to as ‘the Act’) at the same time, the motification of the relief granted by the learned Single Judge while holding the workman entitled for compensation only and not granting reinstatement is in resonance with the decision of 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 various principles have been laid down by the Hon'ble Full Bench in deciding as to "*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?*" 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. Keeping in view the length of service of the workman and the fact that he was employed on daily wage basis, we are of the considered opinion that the order of awarding of a compensation of Rs. 1.5 lakhs the present case by the learned Single Judge is well justified to redressal of the grievance of the workman for termination of his services in violation of the provisions of Section 25-F of the Act. Similarly the amount of compensation has also been rightly quantified by the learned Single Judge in other cases keeping in view the length of service of the workmen.

11. In view of the aforesaid discussion, we are of the considered opinion that the order dated 26.10.2017 passed by the learned Single Judge in all the aforesaid Civil Writ Petitions is well justified and in resonance with the factual and legal position applicable to this case. Consequently, all the above-stated letter patent appeals have no merits and the same stand dismissed.

Pending miscellaneous application (s), if any, also stand disposed of.

(G.S.Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

24.02.2023
ShivaniKaushik

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No