

LPA-878-2019 (O&M),
LPA-879-2019 (O&M) and
LPA-887-2019 (O&M)

-1-

231-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-878-2019 (O&M)
Date of Decision: 09.02.2023

The Executive Engineer, Public Welfare Department (Public Health),
Mandal 2, Gohana Road, Sonipat.

.....Appellant

Vs.

Parmod Kumar and another

.....Respondents

LPA-879-2019 (O&M)

The Executive Engineer, Public Welfare Department (Public Health),
Mandal 2, Gohana Road, Sonipat.

.....Appellant

Vs.

Satish and another

.....Respondents

LPA-887-2019 (O&M)

The Executive Engineer, Public Welfare Department (Public Health),
Mandal 2, Gohana Road, Sonipat.

.....Appellant

Vs.

Vedpal 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.

Mr. Ramesh Goyat, Advocate,
for respondent No. 1.

HARPREET KAUR JEEWAN, J.

Consideration in the present Letters Patent Appeals filed by the appellants is to the order of the learned Single Judge in CWP-10023-2016, titled **Vedpal vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another;** CWP-10064-2016 titled **Parmod Kumar vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another** and CWP-10111-2016 **Satish vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another,** whereby the writ petitions filed by respondent No. 1 herein were disposed of, vide a common order dated 26.09.2018 and the separate Awards passed by the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as “the Tribunal”), dated 18.12.2015 were modified.

2. As per the facts of the lead case before the learned Single Judge, i.e. CWP-10023-2016, titled **Vedpal vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another,** respondent No. 1 (hereinafter referred to as “the workman”) was appointed as “Plumber Helper” with the appellant (hereinafter referred to as the management) on 01.06.1995. He worked continuously till 31.03.1997 and his last month salary was ₹1548.60/-. His services were terminated on 31.03.1997 without issuance of any notice or payment of retrenchment compensation. The Industrial dispute raised by him was answered in his favour by the Tribunal holding that he is entitled for compensation of ₹40,0000/- to be paid by the management within a period of 03 months failing which the management will be liable to pay interest @ 6% per annum.

3. The respondent No. 1-Parmod Kumar, who filed CWP-10064-2016) was appointed on 01.12.1995, whereas respondent No. 1-Satish, who filed CWP-10111-2016 was appointed on 01.09.1995. However, their services were terminated on the same date, i.e. 31.03.1997 without payment of any retrenchment compensation and without issuance of any notice. The reference to their industrial dispute was also decided in their favour by the Tribunal by awarding them similar compensation of ₹40,000/- as awarded to the respondent-Vedpal.

4. The learned Single Judge allowed all the three writ petitions and modified the relief granted by the Tribunal and ordered that all the workmen are entitled for reinstatement with continuity of service and back-wages from the date of issuance of their respective demand notices. The learned Single Judge had taken into consideration the admissions made by MW-1 Anil Kumar Rohilla who was examined by the management wherein he has admitted the date of appointment, as well as the date of termination of service of the workman. The said witness has also admitted the fact that at the time of retrenchment, the workman was not given any retrenchment compensation. He has also admitted that the workman (Vedpal) had worked for 318 days with the management. This fact was also taken into consideration by the learned Single Judge that the management had not challenged the impugned Award passed by the Tribunal and relying upon the judgment rendered by this Court in **Ramesh Kumar vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another** (CWP-19114-2016, decided on 18.09.2018), the relief of reinstatement was

granted and the arguments raised by the management with regard to payment of compensation were repelled.

5. The learned counsel for the appellants submitted that the direction given by the learned Single Judge for reinstatement in service after a prolonged delay of merely 21 years of the alleged termination and granting the benefit of full back-wages and continuity of service from 03.11.2003 is not legally sustainable by taking into consideration the principles of 'no work no pay', as the workman is not expected to remain ideal for all these years. It was submitted that the workman had only worked for a short period. He has not completed 240 days in any calendar year as such, there is no violation of any provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). As such, the order passed by the learned Single Judge is liable to be set aside.

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

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

8. A perusal of the Award passed by the learned Tribunal, dated 18.12.2015 (Annexure P-4) indicates that the appellant has admitted in the written statement, the date of appointment of the workman as 01.06.1995 and his termination on 31.03.1997. The retrenchment notice Ex. WW-1/1 issued by the management was also produced by the workman while he appeared as WW-1 before the Tribunal. In view of the admissions made by the appellant-management, the learned Single Judge has rightly observed

that the workman had completed more than 240 days in the last preceding 12 calendar months. Since the workman has completed 240 days of service before his service were terminated, hence, it 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,--

xxxx

xxxx

xxxx

xxxx

[(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;]”

9. It is neither the plea of the appellants before the Tribunal nor it has been established that conditions precedent for retrenchment of the workman as provided under Section 25-F of the Act were fulfilled before the service of the workman were dispensed with. 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].”

10. We have considered the facts of the present case. The services of the workman were dispensed with on 31.03.1997 and he issued the demand notice on 20.10.2003, i.e. after a period of 06 years. He has worked for less than 02 years with the management and raised his claim with the delay of 06 years. Keeping in view these peculiar circumstances, it is to be determined *whether the order passed by the learned Single Judge awarding his reinstatement with full back-wages is legally sustainable?*. In this regard, 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, has laid down the principles for determination as to whether compensation should be awarded or the reinstatement where there is violation of 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.”

11. Applying the ratio of the said decisions to the facts of the present case, we are of the considered opinion that the workman having raised a demand with a period of 06 years delay and keeping in view the length of service, the infringement of the rights of the workman should be redressed by way of awarding compensation instead of the reinstatement.

12. In view of the ratio of the decision of the Apex Court in Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh 2013 (1) SCR 679, whereby while noticing that service was of 08 months, compensation of ₹50,000/- was awarded. In the present case, awarding of compensation of ₹1,50,000/- to each of the workman-respondent No. 1 would be equitable and justified especially keeping in view the length of service rendered by the workman and the prevalent DC rates of daily wage employees at the time of retrenchment of the workman.

12. Consequently, all these appeals are allowed and the judgment passed by the learned Single Judge, dated 26.09.2018 is set aside. The compensation be paid to the appellant-workman in each case 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 application(s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

February 09, 2023

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Whether Speaking

Yes/No

Whether Reportable

Yes/No