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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13655-2019 (O/M)
Date of Decision: 07.07.2023

Asha Rani

....Petitioner

Versus

Presiding Officer, Industrial Tribunal and Labour Court, Union Territory,
Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. N.K. Bhalla, Advocate
for the petitioner.

Ms. Aakanksha Sawhney, Addl. Senior Standing Counsel with
Ms. Shubreet Kaur, Junior Panel Counsel
for respondents No. 2, 4 to 6.

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HARSH BUNGER, J.

1. Petitioner (Asha Rani) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for modifying the award dated 20.03.2018 (Annexure P-1) passed by Industrial Tribunal and Labour Court, Union Territory, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby the reference was answered in favour of the petitioner and termination of service of the petitioner was set aside, however, she was granted a lump sum compensation of Rs. 25,000/- in lieu of reinstatement in service.

Further prayer has been made for directing respondent No.2 to reinstate the petitioner into service with full back wages and continuity of

service.

2. Briefly, the petitioner (Asha Rani) raised an industrial dispute by serving a demand notice dated 06.03.2012 upon the Medical Officer Incharge, School Health Programme, Civil Dispensary, Sector 19, Chandigarh and others under Section 2A of the Industrial Disputes Act, 1947 (for short "1947 Act").

3. As per the statement of claim, the petitioner is stated to have been appointed as helper by the respondent-Management on 21.06.2007 through Aman Security and Detective, however, no appointment letter was issued. It is claimed that the petitioner-workman is a trained *dai* and had been performing her duties as helper with dedication and her work and conduct remained highly satisfactory throughout her long service tenure and there was no complaint against her. As per the petitioner, when she reported for duty on 01.10.2011, the Management did not allow her to work and despite her effort to know about the reason for not permitting her to work, no satisfactory reply was given and her services were terminated without giving any notice. It was claimed that her salary/dues were not paid despite of repeated request to the Management. The petitioner claimed that the petitioner had worked for more than 240 days in a calendar year and her services could not be terminated without complying with the provisions of Section 25-F of 1947 Act and accordingly, termination of her service was illegal. It was also claimed that the job performed by the petitioner still existed in the Management and at the time of termination of her services, the persons junior to the petitioner were retained and even new appointments were made after termination of the petitioner, accordingly it was pleaded that the petitioner has been terminated in violation of the provisions of

Section 25-F, 25-G and 25-H of the 1947 Act. The petitioner also claimed the amount of gratuity and earned leave etc. Accordingly, it was prayed that the petitioner be reinstated with continuity of services, full back wages and with all pending benefits with 18% compound interest.

4. The aforestated claim was contested by the respondents No. 2, 5 and 6 herein, wherein it was stated that the petitioner was engaged by M/S Aman Security and Detective (Regd.) for providing manpower to the Health Department, Union Territory, Chandigarh and the petitioner was drawing emoluments from the concerned agency who drew the amount from the Health Department as per the terms and conditions of the agreement. It was claimed that the workman-petitioner did not have any direct relation of employee-employer with respondents No. 2, 5 and 6 herein.

It was the categoric case of the respondents No. 2, 5 and 6 herein that the petitioner was engaged as helper on contract basis and the contract period was extended up to 31.03.2011 and thereafter, the same was extended up to 30.09.2011, keeping in view her good performance report. It is stated that her period of contract was not extended further after 30.09.2011. It was claimed that last drawn salary of the petitioner was Rs.5,250/- per month and not Rs.6,000/- as alleged by the petitioner. It was also the stand that the services of the petitioner were governed by the terms of her contract and the same ended as her performance report was reported not good and her service contract was not extended after 30.09.2011. The entitlement of petitioner to gratuity and earned leave and other benefits was denied and it was also contended that provisions of Section 25-F of 1947 Act are not applicable to the petitioner. Accordingly, it was prayed that the claim of the petitioner be dismissed.

5. The Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh, vide its award dated 20.03.2018 (Annexure P-1), *inter alia* held as under:

“(i) It is admitted case of the management that initially the workman was engaged from 21st June, 2007 through out source agency and thereafter she was engaged on 1st June, 2010 on contract for three months, which was extended from 1st October, 2010 to 31st March, 2011 and 2nd April, 2011 to 30th September, 2011. The workman was not given extension after 1st October, 2011 as her performance was not good. Admittedly the workman had worked with the management for more than 240 days in a year preceding 30th September, 2011 i.e. last date of her contract period. So there is no force in the stand of the management that there is no relationship of employee and employer in between the workman and management No. 1 and 4 to 7.

(ii) the management cannot deny the protection given to the workman as under the provisions of Section 25-F of the ID Act and cannot override the rights of the workman by adding any clause. Though it is the case of the management that her contract period was not extended due to average assessment report but it is also admitted case that the workman had worked with the management from 1st June, 2010 to 30th September, 2011 and no notice or notice pay in lieu of notice and retrenchment compensation was paid to the workman, in violation of provisions of Section 25-F of the ID Act, at the expiry of her contract period and when she was not given extension.”

6. Accordingly, considering the totality of circumstances, the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh held as follows:

“ But since the services of the workman were terminated in violation of provisions of Section 25-F of the ID Act so the workman is held entitled to compensation for his illegal termination. Keeping in view the length of service and last drawn wages of the workman, ends of justice would be met if the workman is compensated with a lump sum compensation of Rs.25,000. Accordingly, both these issue are decided in favour of the workman and against the management.

Relief:

10. In the light of findings on the issues above, this reference is allowed and answered in favour of the workman. The workman is entitled for lump sum compensation of Rs.25,000. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette. Appropriate Government be informed. Copy of this award be also sent to Learned District and Sessions Judge, Chandigarh in view of sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.”

7. Against the aforesaid award dated 20.03.2018 (Annexure P-1), the petitioner has approached this Court by way of filing the instant Writ Petition.

8. Concededly, the aforesaid award dated 20.03.2018 (Annexure P-1) has not been impugned by the respondents herein.

9. I have heard learned counsel for the respective parties and have gone through the paper book as well as impugned award dated 20.03.2018 (Annexure P-1) passed by Presiding Officer, Industrial Tribunal and Labour Court, Union Territory, Chandigarh.

10. At the time of issuance of notice, the following order was passed :-

“ After arguing for some time, learned counsel for the petitioner states that he confines his claim for enhancement of compensation awarded on the ground that the amount awarded is wholly inadequate.

Notice of motion for 7.8.2019 on the aforementioned limited aspect of the matter.”

A perusal of the file reveals that respondent No. 3 herein (Aman Security and Detective) was already proceeded against ex-parte before the Tribunal below.

11. On the other hand, learned counsel for respondents No. 2, 4 to 6 has 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 writ petition has been made.

12. Hon’ble the Supreme Court in the case of B.S.N.L. Versus Bhurumal, 2014(3) S.C.T. 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.....”*

13. In the case of ***Assistant Engineer, Rajasthan Dev. Corpn. And another v. Gitam Singh*** 2013(5) Supreme Court Cases 136, the above 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.

14. The Hon'ble Apex Court in a plethora of cases has directed compensation in lieu of reinstatement. Reference can be made to Mehboob Deepak v. Nagar Panchayat, Gajraula: (2008) 1 SCC 575, Sita Ram v. Motilal Nehru Farmers Training Institute: (2008) 5 SCC 75, and GDA v. Ashok Kumar: (2008) 4 SCC 261.

15. Taking note of the fact that the petitioner was appointed as a Helper on salary of about Rs. 5,250/- (as per stand of respondents No. 2, 4 to 6) and her services have been terminated in violation of provisions of Section 25-F of 1947 Act, coupled with the fact that the respondents have not laid any challenge to the award passed by Presiding Officer, Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh and also considering the fact that the petitioner has been litigating with the respondent-Management since the year 2012; therefore, I am of the opinion that the compensation awarded to the petitioner is on the lower side.

16. Accordingly, considering the totality of circumstances, in my view, the interest of justice would be met if the compensation awarded to the petitioner by the Tribunal below is enhanced from Rs. 25,000/- to Rs. 1,00,000/-. The respondent-Management is directed to pay the enhanced amount to the petitioner within a period of three months from the date of receipt of a certified copy of this order, after adjusting the lump sum compensation awarded by the Tribunal below, if already paid to the petitioner. In case of non-payment of the 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 afore-stated terms.
18.
- All pending application(s), if any, shall stand closed.

07.07.2023
Himani/sjks

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No