

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(239)

LPA-1203-2021 (O&M)

Decided on : 01.03.2023

Sukhbir Singh

.....Appellant(s)

Versus

State of Haryana & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Ms.Ramanjit Kaur, Advocate, for
Mr.Sandeep Wadhawan, Advocate for the appellant.

Mr.Ankur Mittal, Addl.A.G., Haryana
and Mr.Saurabh Mago, AAG, Haryana.

G.S. Sandhawal, J.:-

CM-266-LPA-2022

Application for condoning the delay of 1311 days in re-filing the appeal is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 1311 days in re-filing the appeal is hereby condoned.

CM stands disposed of.

LPA-1203-2021 (O&M)

1. Consideration in the present appeal is to the order passed by the learned Single Judge dated 09.11.2017 passed in CWP-16769-2002 titled *State of Haryana Vs. Sukhbir Singh & another* wherein the writ petition filed by the State was allowed and the Labour Court award dated 25.02.2002 (Annexure P-6) which was in favour of the workman to the extent that reinstatement had been directed with continuity of service and full back wages from the date of the demand notice was set aside.

2. The learned Single Judge was of the view that in view of the provisions of Section 2(o)(bb) of the Industrial Disputes Act, 1947 (for

short, the 'Act') and while placing reliance upon the judgment of the Apex Court in **Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri, 2013 (14) SCC 456** it could not be said to be an act of retrenchment and it was only on completion of the tenure services had been dispensed with and there was no violation of the provisions of Sections 25G & 25H of the Act.

3. The contention that the State had accepted the awards and implemented them in similar circumstances, were held to be on illegalities which could not be perpetuated.

4. In our considered opinion, the cursory setting aside of the award was not justified in the facts and circumstances as the factual matrix was not kept in mind while applying the judgment of the Apex Court which escaped the notice of the learned Single Judge. The claim was on the basis of the appointment made on contract basis on 01.03.1993 for a period of 89 days and that it had been extended time and again and he had worked till 19.11.1998 and eventually raised the industrial dispute by a demand notice dated 16.03.1999. Apparently the final letter of appointment was dated 25.09.1998 (Annexure P-1) wherein the Deputy Excise and Taxation Commissioner, Jhajjar had employed him as a Taxation Peon in the office of Deputy Excise and Taxation Commissioner, Jhajjar for a period of 89 days from 14.09.1998. Resultantly, his appointment was upto 13.12.1998 and he was to be paid DC rates as per the contractual fee. The contract could be terminated in case his work and conduct was found to be unsatisfactory and it was in such circumstances, the finding which has been recorded that the termination was per the terms of appointment was against the record.

5. It is to be noticed that as per the demand notice itself the claim that he had been appointed in the said post in a different district at Gurugram from 01.02.1993 to 31.12.1993 and thereafter, accommodated at Rohtak and had continued till 21.09.1994 and was adjusted at District Jhajjar apparently on the creation of the same from 31.09.1996 and resultantly, retrenched on 19.11.1998 and therefore, had completed 240 days of service. Similar was the claim statement made and in the written statement it was admitted that he had worked from 01.03.1993 and continued as claimed and had been transferred to Jhajjar on 19.12.1997 for the period from 01.12.1997 to 27.02.1998 and from 16.06.1998 to 12.09.1998 and from 14.09.1998 to 19.11.1998. The finding recorded by the Labour Court while placing reliance upon Ext.M-3 the detail of the working days prepared was that he had worked from 01.12.1997 upto 19.11.1998 for a period of 245 days. There was neither any such defence by the State also that it was a case under Section 2(oo)(bb) of the Act and this aspect also missed the attention of the learned Single Judge. It has been time and again held that until there is a perversity in the award the Writ Court is not to sit as a Court of appeal and interfere in the orders under Article 226/227 of the Constitution of India. Reliance can be placed upon the judgment of Apex Court passed in **K.V.S.Ram Vs. Bangalore Metropolitan Transport Corporation 2016 (1) SCC 308**.

6. Resultantly, once the workman had completed 240 days and apparently had worked for a period spanning more than 5 ½ years, we are of the considered opinion that dispensing of his service before his contractual period came to an end would entitle him for the statutory protection which would be evident from the award of the Labour Court.

However, keeping in view the fact that at this point of time, it would not

be justified to put him back in service since a period of almost 25 years has gone by and therefore, it would be just and appropriate to award compensation to the tune of Rs.2,50,000/- on an average of Rs.50,000/- per year, keeping in view the fact that the State had taken his service for more than 5 years with the same office in different districts.

7. The Apex Court in **Haryana Urban Development Authority Vs. Om Pal, (2007) 5 SCC 742** granted Rs.25,000/- for the service of one year whereas in **Uttaranchal Forest Development Corporation Vs. M.C.Joshi, (2007) 9 SCC 353**, for a period of 2 years, a sum of Rs.75,000/- was granted. Similarly, in **Asst.Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh, 2013 (1) SCR 679**, the said view was followed while noticing that the service was of 8 months and thus, compensation of Rs.50,000/- was granted. Similarly, in **Management, Hindustan Machine Tools Ltd. Vs. Ghanshyam Sharma, 2018 (18) SCC 80**, for a period of one year, compensation of Rs.50,000/- had been granted. In **K.V.Anil Mithra & another Vs. Sree Sankaracharya University of Sanskrit & another, 2021 (4) SCT 415**, for a period of little over 4 years, amount awarded was Rs.2,50,000/- in lieu of the reinstatement and backwages of 50% which was granted and accordingly, modified.

8. The judgment relied upon by the learned Single Judge in Bhavnagar Municipal Corporation (supra) was a case where there was an appointment for 54 days in two fixed periods and on the expiry of the second term his service stood automatically terminated on the basis of the contract of appointment. Thus Section 2(oo)(bb) of the Act was applied which is not the case in hand and therefore, we are of the considered opinion that the Labour Court at that point of time was justified to that

extent since only a period of 4 years had gone by when his services were terminated he was liable to be reinstated with back wages. But, at this point of time now it would serve the ends of justice if the dispute is settled by directing payment of compensation of Rs.2,50,000/-.

9. Accordingly the present appeal is allowed and the order dated 09.11.2017 of the learned Single Judge is set aside and it is directed that the workman is entitled for payment of compensation of Rs.2,50,000/-. The said amount be paid within a period of 2 months from the date of receipt of a certified copy of this order. In case the needful is not done, the said amount will carry interest @ 8% per annum till payment.

(G.S. SANDHAWALIA)
JUDGE

01.03.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes