

213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12574-2014 (O/M)

Date of decision : 04.08.2023

Paramjit Singh

..... Petitioner

Versus

Industrial Tribunal, Patiala through Presiding Officer and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. A.S. Pannu, Advocate for
Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Additional A.G. Punjab
for respondents No. 2 to 4.

:-

:-

HARSH BUNGER, J.

1. Petitioner (Paramjit Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 10.09.2013 (Annexure P-1), passed by the Industrial Tribunal, Patiala (respondent No. 1 herein) whereby the compensation amount of Rs. 12,000/- has been granted, however, the relief of reinstatement in service with back wages and continuity of services has been denied.

2. Briefly, the petitioner joined the service of respondent-Management as a Beldar on 01.05.1994 and worked continuously upto 31.10.1995. His services were terminated on 01.11.1995 without issuing any notice or charge sheet.

3. Aggrieved by the action of respondent-Management, petitioner raised an industrial dispute and the matter was referred to the Industrial Tribunal, Patiala (in short 'the Tribunal') for adjudication. Before the Tribunal,

respondent-Management took the plea that the petitioner was appointed as Beldar on daily wages for specified period and for specific work for a fixed period sanctioned from time to time and his services came to an end on 31.10.1995 after the expiry of fixed period, thus, the petitioner is not entitled to the relief as sought by him.

4. The Tribunal, after hearing both the parties and upon considering the material placed on the record, held as under:-

- (a) So far as period of 240 days of work in the year immediately preceding the date of termination of workman i.e. 01.11.1995, is concerned the same is admitted, because MW1 Rupinder Singh, SDO of the respondent, in his cross-examination, admitted as correct that workman has worked for more than 240 days in the last calendar year. Thus, the workman fulfils the work period criteria as stipulated under Section 25-B of the Industrial Disputes Act, 1947.
- (b) The workman was not working against specific project for limited period.
- (c) Termination of workman is in violation of Section 25-F of the Industrial Disputes Act, 1947 and is illegal and unjustified for want of compensation.
- (d) Workman is not entitled to reinstatement because of ban on recruitment of daily wage labour by the Government.
- (e) Since there is ban on fresh recruitment of daily wagers, it is a fit case for grant of compensation instead of reinstatement with continuity of service with full back wages.

Taking into consideration the fact that the services of the workman were terminated in violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 and that the workman had worked from 01.05.1994 to 31.10.1995 and the reference remained pending for about 8 years, accordingly, the Tribunal granted compensation worth Rs. 12,000/- to be paid to the workman (Petitioner herein) within 45 days of the publication of the Award, failing which the workman would be entitled to the awarded amount alongwith interest @ 6% per annum from the date of passing of the award till realization.

5. Against the aforesaid award dated 10.09.2013, the petitioner has approached this court by way of filing the instant writ petition.

6. Concededly, the aforesaid award dated 10.09.2013 has not been impugned by the Respondent No. 2 to 4 (Bhakra Mail Line Division, Patiala).

7. I have heard learned counsels for the respective parties and have also gone through the paperbook and the impugned award.

8. After arguing for some time, learned counsel for the petitioner confines his prayer only with regard to enhancement of compensation, as awarded by the Tribunal by submitting that the compensation awarded by the Tribunal is too meagre.

9. Per contra, learned State counsel has opposed the prayer of the petitioner for enhancement of compensation by submitting that the awarded compensation is justified in view of the fact that the workman had worked for a very short period, accordingly, he prayed for dismissal of the writ petition.

10. Hon'ble the Supreme Court in the case of ***B.S.N.L. Versus Bhurmal 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.

25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied...”

11. 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.

12. Taking note of the fact that the petitioner, being a poor workman was working as a Beldar from 01.05.1994 to 31.10.1995 and his services were terminated on 01.11.1995 in a totally illegal and unjustified manner in violation of provisions of section 25-F of the Industrial Disputes Act, 1947 and that the petitioner has been litigating with the respondent-department since then; I am of the considered opinion that the compensation awarded to the petitioner is on the lower side. Accordingly, the interests of justice would be met if the compensation awarded by the Tribunal is enhanced from Rs. 12,000/- to Rs. 50,000/-. The amount be paid to the petitioner-workman within a period of three months from the date of receipt of a certified copy of this order. In case of non-payment of the amount 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.

13. The instant writ petition is disposed of in aforestated terms.

14. All pending applications, if any, shall stand closed.

(HARSH BUNGER)
JUDGE

04.08.2023
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No