

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

CWP-11473-2016 (O&M)
Date of Decision: 28.11.2023

MAKHAN SINGH

...Petitioner

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
PATIALA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Raj Kaushik, Advocate
for the petitioner.

None for respondents No.2 and 3.

HARSH BUNGER, J.

1. Petitioner (Makhan Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, for quashing the impugned Award dated 02.06.2014 endorsed on 28.07.2014 (Annexure P-8) passed by learned Presiding Officer, Industrial Tribunal, Patiala; whereby, he has been granted compensation of Rs.30,000/- instead of reinstatement in service and all consequential benefits.

A further prayer has been made by the petitioner to direct the respondents No.2 and 3 (Punjab Agricultural University) to reinstate the petitioner in service with full back wages.

2. Briefly, the petitioner-workman (Makhan Singh) raised an industrial dispute regarding termination of his services by serving a demand notice dated 21.11.2008; however, on failure of conciliation proceedings, the dispute was referred to the Industrial Tribunal, Patiala (here-in-after referred to as 'the Tribunal') under Sections 2-A and 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act') for adjudication.

3. In the claim statement, petitioner-workman claimed that he had worked with respondents No.2 and 3-Punjab Agricultural University (Seed Farm) (here-in-after referred to as 'the respondent-Management') as Beldar (Seed Farm), Nabha, from 07.11.2001 to 28.04.2008; however, his services were illegally terminated on 29.04.2008, without any notice, enquiry and without payment of compensation. Petitioner claimed that at the time of his termination, he was drawing Rs.2130/- p.m. as salary and the respondent-Management had retained junior persons and that new persons were also employed by the respondent-Management. Petitioner-workman claimed that he was unemployed; accordingly, prayer for reinstatement with continuity of service and full back wages was made.

4. Notice of reference was issued to the respondent-Management and they contested the claim of the petitioner-workman, *inter alia*, on the ground that the claim was false, frivolous and that the respondent-University was an educational institute and not an Industry under the 1947 Act. It was stated that the petitioner-workman was not a regular worker and was working with the University Seed Farm on daily basis as the work of the seed farm is seasonal. The stand of the respondent-Management was that the petitioner-workman was a quarrelsome person and creates indiscipline/nuisance in the seed farm and also manhandled the staff members, which was not in the interest of the work of the seed farm. As per the Management, the petitioner-workman had left the work with his own free will, without any prior notice or intimation. It was also stated that the petitioner-workman had not worked with the respondent-Management for 240 days in twelve months preceding his alleged termination; accordingly, prayer for dismissal of the claim was made.

5. From the pleadings of the parties, the issues were framed and evidence was led by the respective parties.

6. After considering the material/evidence available on the record, the Tribunal below vide impugned Award dated 02.06.2014 (Annexure P-8), answered the reference in favour of the petitioner-workman, by holding that the termination of the services of the petitioner-workman was in violation of Section 25-F of the 1947 Act. However, the Tribunal below further held that since petitioner-Makhan Singh was not a regular employee of the respondents and proper procedure was not followed while giving him employment, therefore, the appointment of the petitioner was contrary to the provisions of Articles 14 and 16 of the Constitution of India, hence, the petitioner is not entitled for reinstatement with back wages. However, the Tribunal granted compensation of Rs.30,000/- to the petitioner-Workman.

7. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner has, *inter alia*, submitted that once the Tribunal had reached the conclusion that the services of the petitioner-workman had been terminated in violation of the provisions of Section 25-F of the 1947 Act; therefore, the petitioner was entitled to relief of reinstatement with full back wages and continuity of service. It is contended that the Tribunal below has erred in law and fact in not granting the necessary relief and has awarded only a meagre amount of Rs.30,000/-, as compensation. Accordingly, it was prayed that the impugned Award dated 02.06.2014 (Annexure P-8) be modified and necessary relief of re-instatement with full back wages and continuity of service be granted in favour of the petitioner.

9. On the other hand, while filing the written statement, respondents No.2 and 3 have opposed the prayer of the petitioner on the ground that the Award passed by the Tribunal below is well reasoned and justified and it does not call for any interference by this Court. It is further submitted that in cases where termination of a worker is held to be bad for violation of provisions of the 1947 Act; even in those cases, the relief of reinstatement with continuity of service and back wages is not automatic. It is submitted that keeping in view the facts and circumstances of the case, the necessary relief has already been granted to the petitioner. Accordingly, prayer has been made for dismissal of the claim of the petitioner.

10. I have heard learned counsel for the petitioner and have also gone through the paper book as well as impugned award dated 02.06.2014 (Annexure P-8) passed by the learned Tribunal below.

11. In ***Incharge Officer v. Shankar Shetty: (2010) 9 SCC 126***, it was *inter alia* held that in those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

In ***Shankar Shetty's*** case (supra), the Hon'ble Apex Court, by referring to the various judgments, *inter alia* held as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg., Board, delivering the judgment of this Court, one of us

(R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchyat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14).

"7. It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and

instead compensation has been awarded. This Court has distinguished between a daily wagger who does not hold a post and a permanent employee."

4. Jagbir Singh has been applied very recently in **Telegraph Deptt. v. Santosh Kumar Seal**, wherein this Court stated: (SCC p.777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

12. It is also worthwhile to refer to the decision of **BSNL vs Bhurumal, 2014(3) SCT 49**; wherein, the Apex Court has clearly held that when there is violation of Section 25-F of the Act, 1947 the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the end of justice. The Hon'ble Supreme Court observed 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.”

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

13. Coming to the case in hand, the Tribunal below has returned the following findings :-

“16. Thus, the document Mark-1 issued by Director, University Seed Farm, Nabha and placed on record by the workman, fully proves that workman completed 240 days of service in the year immediately

preceding the date of his termination. There is nothing on record that at the time of termination of services of the workman, any notice or compensation was paid to the workman.

Thus, in view of the above discussion, it is held that termination of services of the workman is in violation of Section 25-F of the I.D.A., 1947.

18. *However, non-compliance of the provisions of Section 25-F of the Industrial Disputes Act-1947 although may lead to the grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would not mean that such relief is to be granted automatically or as a matter of course, as has been held by the Hon'ble Supreme Court in **Haryana State Electronics Development Corporation Ltd., Vs. Mamni, 2006(2) LLJ Page 744 (SC)**. In the said case Hon'ble Supreme Court modified the impugned Award by directing that the workman shall be compensated by payment of Rs.25000/- instead of order of reinstatement with back wages.*

19. *Makhan Singh was not the regular employee of the respondent department. Proper procedure was not followed while giving him employment. Such type of ad-hoc/temporary appointments being contrary to the provisions of Article 14 and 16 of the Constitution, are illegal, as has been held by the Hon'ble Supreme Court in **Secretary, State of Karnatka Vs. Uma Devi and other 2006(2) LLJ Page 722 (SC)**. Even, otherwise, in the instant case, the services of the workman were terminated in 2005 and period of 8 years has already lapsed.*

20. *In the light of the above discussion, it is held that workman Makhan Singh is not entitled to relief of reinstatement with back wages. Taking into consideration the fact that the service of the workman were terminated in violation of the provisions of Section 25-F of the I.D.A 1947*

and that he worked with the respondent for the period from April 2003 to March 2008 and this reference remained pending for about 5 years, interest of justice shall be served if compensation worth Rs.30000/- (Rupees Thirty Thousand only) is directed to be paid to the workman by the respondent. As the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this Court by the appropriate Government for adjudication, the reference is maintainable. Accordingly, issue No.1 is answered in favour of the workman and against the respondents and issue No.2 is answered against the respondents and in favour of the workman.

RELIEF

21. In the light of my finding regarding above noted issues, this reference is hereby answered in favour of workman and against the respondent and the respondent is directed to compensate the workman with Rs.30,000/- (Rupees Thirty Thousand only) within 45 days of the publication of the award, failing which the workman will be entitled to the awarded amount along with interest @ 6% per annum, from the date of passing of the award till realization. File be consigned to the record room.”

14. It is apposite to note here that the respondent-Management has not raised any challenge to the impugned Award dated 02.06.2014 endorsed on 28.07.2014 (Annexure P-8).

15. In the afore-mentioned facts and circumstances and considering the fact that the petitioner has been found to have worked from April, 2003 to March, 2008 and he was not a regular employee and it has not been shown that due process was followed while appointing the petitioner; therefore, the Tribunal has rightly not granted relief of reinstatement with continuity of service and back wages to the petitioner. However, taking note

of the fact that the petitioner had worked from April 2003 to March 2008 i.e. for almost 5 years and his services were terminated in violation of the provisions of Section 25-F of the 1947 Act; coupled with the fact that the respondent-Management has not laid any challenge to the award passed by the Tribunal and also that the services of the petitioner were terminated on 29.04.2008 i.e. almost 15 years ago and petitioner had been litigating with the respondent-Management since 2009; I am of the view that the compensation awarded to the petitioner is on the lower side. Accordingly, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner by the Tribunal is enhanced from Rs.30,000/- to Rs.3,00,000/-. The respondent-Management is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs.30,000/- awarded by the Tribunal below, if already paid) within a period of three months from the date of receipt/presentation of a certified copy of this order. 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 from the date of expiry of aforesaid period of three months till such time payment is made. Consequently, the Award dated 02.06.2014 (Annexure P-8) passed by the Tribunal shall stand modified to the extent indicated above.

16. The instant writ petition is accordingly disposed of in the afore-stated terms.

17. All pending application/s, if any, shall also stand closed.

November 28, 2023
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(HARSH BUNGER)
JUDGE

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