

CWP-141-2014

-1-

217

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

CWP-141-2014

Date of Decision: 05.07.2023

Anil Kumar

...Petitioner

Versus

Presiding Officer-cum-Industrial Tribunal, Labour Court, Hisar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rahul Sidher, Advocate
for the petitioner.

Mr. Padam Kant Dwivedi, Advocate
for respondents No.2 to 5.

HARSH BUNGER, J. (Oral)

1. Petitioner (Anil Kumar) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari seeking quashing of impugned Award dated 14.08.2013 (Annexure P-4) passed by respondent No.1, to the extent, whereby the petitioner was held not entitled for reinstatement in service and a compensation of Rs.60,000/- was awarded to the petitioner. A further prayer has been made for directing respondents No.2 to 5 to reinstate the petitioner with continuity of service along with full back wages and all service benefits.

2. As per the case of the petitioner, he was appointed as Steno Typist by the respondent-Management on 01.10.2001 against a vacant and

CWP-141-2014**-2-**

sanctioned post and was posted in the office of respondent No.4 herein by a verbal order where he worked continuously for the period from 01.10.2001 to 02.01.2005 and then for the period from 03.01.2005 to 20.10.2006 in the office of respondent No.5 herein. As per the petitioner, during his service tenure he made representations requesting to regularize his services and to grant him regular pay scale as per the Haryana Government Policy decisions, however, nothing was done. Petitioner claims that there was no complaint of any kind regarding his work and conduct. It is the case of the petitioner that he was appointed at a monthly salary of Rs.1500/- which was later on increased to Rs.1800/- per month in the year 2003-04 and then to Rs.2000/- per month in the year 2005-06. Petitioner claimed that his services were terminated by the respondent-Management abruptly on 20.10.2006 in an illegal and arbitrary manner in violation of provisions contained in Section 25-F of the Industrial Disputes Act, 1947 (in short "1947 Act").

3. Thereafter, the petitioner raised an Industrial Dispute by serving a demand notice dated 06.12.2006 and upon failure of the conciliation proceedings, the matter was referred by the appropriate Government for adjudication of the dispute to the Labour Court, Hisar where the petitioner submitted his claim statement and accordingly prays for reinstatement into service with full back wages and all other consequential benefits.

4. On the other hand, the claim of the petitioner was contested by the respondent-Management. It was denied that the petitioner was posted as Steno Typist on 01.10.2001 against a vacant and sanctioned post and also that the petitioner was posted in the office of respondents No.4 and 5 herein. It was also denied that the petitioner had worked continuously up to 20.10.2006 and that his services were terminated on 20.10.2006. It was

CWP-141-2014

-3-

claimed that the petitioner was never appointed on any post at any point of time and the claim of the petitioner regarding the employment as Steno Typist for the period from 01.10.2001 to 20.10.2006 was absolutely false.

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

6. After considering the rival contentions and also the material available on the record, learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar passed an award dated 14.08.2013, wherein it was *inter alia* held as under:

“(i) The petitioner remained in continuous employment as Steno Typist for the period from 01.01.2001 to 30.10.2006 which entitles him the benefits of the provisions contained under Section 25-F of the 1947 Act.

(ii) At the time of terminating the services of the petitioner, he was neither given one month notice indicating the reason for retrenchment nor was paid wages in lieu of notice period and no compensation as provided in Section 25-F of the 1947 Act.

(iii) The termination of services of the petitioner was bad in law.

(iv) The appointment of the petitioner to the post was de hors the rules.”

7. Considering the totality of circumstances, learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar vide impugned Award dated 14.08.2013 granted following relief:

“24. In this case keeping in view the fact that the appointment of the petitioner to the post was de hors of the rules, he is entitled to just and reasonable compensation which keeping in view his length of service is quantified at Rs. 50,000/- i.e. @ Rs. 10,000/- for each completed year of service and Rs. 10,000/- as

CWP-141-2014

-4-

litigation expenses. This issue is answered accordingly.

xxx

xxx

xxx

26. *As a result of above discussion, the reference is answered in favour of the petitioner to the effect that the termination of his service was vitiated due to non-compliance of Section 25 F of the Act and he is awarded just and reasonable compensation of Rs. 60,000/-. The respondents are directed to pay the amount within two months of the date of publication of Award failing which the petitioner shall be entitled to recover some amount from the respondents with interest at the rate of 8% per annum from the date of publication of Award till realization.”*

8. Against the aforesaid award, the petitioner has approached this Court by way of filing the instant Writ Petition.

9. I have heard learned counsel for the respective parties and have gone through the paper book as well as the impugned award dated 14.08.2013 (Annexure P-4) passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar.

10. 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.

11. On the other hand, learned counsel for respondent No.1 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. Concededly, the aforesaid award dated 14.08.2013 (Annexure P-4) has not been impugned by the respondent-Management.

13. Hon’ble the Supreme Court in ***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.

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 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...*

14. 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.

15. Taking note of the fact that the petitioner's appointment was held to be *de hors* the rules, however, considering the finding of Tribunal below that the petitioner has worked for the period from 01.01.2001 to 20.10.2006 as Steno Typist coupled with the fact that the respondent-Management has not laid any challenge to the award dated 14.08.2013

CWP-141-2014

-7-

passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and also that the petitioner had been litigating with the respondent-Management since the year 2009; I am of the considered opinion that the compensation awarded to the petitioner is on the lower side. Accordingly, 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.60,000/- to Rs.2,00,000/-. The respondent-Management is directed to pay the enhanced amount to the petitioner (after adjusting Rs.60,000/- awarded by the Tribunal below, if already paid) within a period of 3 months from the date of receipt 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 @ 6% per annum till such time payment is not made.

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

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

05.07.2023*Himani***(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No