

210

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23701-2011 (O/M)

Date of decision : 30.11.2023

Smt. Bhateri

..... Petitioner

Versus

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

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Tara Chand Dhanwal, Advocate
for the petitioner.

Mr. Satish Singla, DAG Haryana.

-. -

-. -

HARSH BUNGER, J.

1. Petitioner (Smt. Bhateri) 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/mandamus for quashing/modifying the Award dated 28.12.2010 (Annexure P-6), passed by the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Tribunal'), whereby the relief of reinstatement was denied, however, compensation of Rs. 20,000/- was granted.

2. It is apposite to mention here that this is second round of litigation. Earlier, the petitioner-worker raised an industrial dispute, which was referred to the Industrial Tribunal-cum-Labour Court, Hisar, for adjudication, vide Reference No. 13 of 2006, which was decided, vide Award dated 17.04.2009 (Annexure P-3) passed by the learned Tribunal below, whereby a lump sum compensation of Rs. 30,000/- was awarded to the petitioner-worker. Against the said Award dated 17.04.2009 (Annexure P-3),

respondent-Department approached this Court by way of filing CWP-19205-2009 and this Court, vide order dated 23.07.2010 (Annexure P-4), remanded the matter to the Tribunal below, for afresh decision. In pursuance to the directions of this Court, the Tribunal below has decided the matter afresh, vide impugned Award dated 28.12.2010 (Annexure P-6), whereby a lump sum compensation of Rs. 20,000/- was granted to the petitioner-worker.

3. The learned Tribunal below, while passing Award dated 28.12.2010 (Annexure P-6), held as under :-

“11. At the outset, it must be mentioned that neither in the claim statement nor in her evidence the worklady has mentioned the names of the juniors retained by the respondents. She also did not call the record pertaining to such juniors to prove her contention that any junior to her was retained. Hence, it cannot be said that there has been any violation of Section 25-G of the I.D. Act. Moreover, in view of the law laid down in authority titled as Jaipur Development Authority V. Ramsahai and another (2006) 11 SCC 684, retention of such juniors will not confer any right in favour of the worklady to be reinstated.

12. Further, as per the worklady she was appointed as Beldar-cum-Mali on daily paid basis on 01.07.1994 and worked as such till 30.06.2004 and her services were terminated illegally on 01.07.2004 without following the provisions of Section 25-F of the Act. Onus to prove her case was on the worklady. To discharge the said onus the worklady appeared her witness as WW1 and deposed so. She also called

the record pertaining to her working i.e. muster rolls issue entry register of CPF Bhiwani of all schemes for the period from 01.01.2002 to 30.06.2004. Attendance register, payment vouchers, muster rolls of CPF Bhiwani workers for the period from 01.01.02 to 30.06.2004 and seniority list of workers. In pursuance thereof Sh. Krishan Pal Forester appears and stated that the said record would be produced during the evidence of the respondents. In view of the said statement the learned AR for the work lady closed the evidence. However the respondents witness did not bring the complete record and produced only 12 muster rolls as Ex.M-1 to Ex.M-12. Sh. Sandeep Goyat S.D.E.O. MW1 brought only two master rolls as Ex.M-1 to M-2 showing the working of the worklady as 15 days in 8/2002 and 20 days in 9/2002 respectively. The name of the worklady is not appearing in remaining muster rolls. As already elucidated, complete record summoned by the worklady from 01.01.2002 to 30.06.2004 was not produced. Had the record been produced, it would have clarified the matter about the actual working the worklady had put in service. The respondents being the custodian of the record were duty bound to produce the summoned record. However nothing of the sort was done for the reasons best known to the respondents. Hence adverse inference is required to be drawn against the respondents on that count. Since the record pertaining to period from 01.01.2002 to 30.06.2004 was summoned and it was not produced, adverse inference is drawn against the respondents only to the effect that the worklady had worked with the respondents from 01.01.2002

to 30.06.2004 and completed 240 days in 12 preceding months of her termination on 01.07.2004. It has admitted by the Sandeep Goyat MW1 that while removing the worklady no notice, notice pay or retrenchment compensation was given to her. Hence, there has been violation of Section 25-F of the Act.

13. Having cleared the decks let me examine as to what relief the worklady is entitled to get. In a recent authority titled as Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and others, 2010 LLR 677, the Hon'ble Supreme Court has held as follows :-

xxxxxx xxxxx xxxxxx

16. Thus, the Hon'ble Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee and in the case of a daily wager relief of giving compensation instead of reinstatement has been found to be proper. Accordingly, in view of length of services put in by the worklady this court is of the considered view that the worklady is entitled to get just and reasonable compensation to the tune of Rs. 20,000/-. The issue is accordingly decided in favour of the worklady and against the respondents.

Relief

17. As a result of above discussion, the reference is answered in favour of the worklady to the effect that the termination of her services was vitiated due to non-compliance of Section 25 F of the Act and she is awarded just and reasonable compensation of Rs. 20,000/- which she would be entitled to get from the respondents.”

4. The petitioner-worker has challenged said award (Annexure P-6) by filing the instant writ petition before this Court.

5. While issuing notice of motion in this case, the following order was passed on 20.12.2011 :-

“ Since there is nothing on record to suggest that the petitioner was employed by following a transparent procedure of recruitment, the relief of reinstatement cannot be granted to her. The impugned award calls no interference by this Court in this regard. However, in order to decide the issue as to whether the petitioner is entitled to enhanced compensation, let notice of motion be issued for 21.3.2012.”

6. I have heard learned counsel for respective parties and have perused the paperbook with their able assistance.

7. Concededly, the aforesaid Award dated 28.12.2010 (Annexure P-6) has not been impugned by respondent-Department.

8. Learned counsel for the petitioner-worker prays for enhancement of compensation awarded by the Tribunal below by submitting that the compensation awarded by the Tribunal below is on the lower side.

9. On the other hand, learned counsel for respondent-Department has opposed the prayer of the petitioner for enhancement of compensation by submitting that in the peculiar facts and circumstances of this case, the awarded compensation is justified and accordingly, prayer for dismissal of the instant writ petition has been made.

10. Hon'ble the Supreme Court in the case of B.S.N.L. Versus Bhurumal, 2014 (3) SCT 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.....”

11. In the case of Assistant Engineer, Rajasthan Dev. Corpn. and another Versus Gitam Singh, 2013 (5) Supreme Court Cases 136, the abovestated 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. 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.

13. Keeping in view the aforesaid legal position and taking note of the fact that the petitioner has been held to have worked with respondent-Department from 01.01.2002 upto 30.06.2004; and her services have been held to be terminated in violation of provisions of Section 25-F of 1947 Act, coupled with the fact that respondent-Department has not laid any challenge to the aforesaid Award dated 28.12.2010 (Annexure P-6) and also considering

that the petitioner-worker has been litigating with respondent-Department since 2004-05; therefore, I am of the opinion that the compensation awarded to the petitioner-worker is on the lower side.

14. Accordingly, considering the totality of circumstances, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner by the Tribunal below is enhanced from Rs. 20,000/- to Rs. 2,50,000/-. Respondent-Department is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 20,000/-, if already paid), within a period of three months from the date of receipt/production of certified copy of this order. In case of non-payment of aforesaid 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 the time such payment is not made.

15. The instant writ petition is disposed of in the aforestated terms.

16. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

30.11.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No