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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10363-2017 (O/M)

Date of decision : 20.11.2023

Balbir Singh

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Ludhiana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sharwan Sehgal, Advocate
for the petitioner.

Mr. Lovepreet Kaur, Advocate for
Mr. S.S. Bedi, Advocate
for respondents No. 2 and 3.

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HARSH BUNGER, J.

1. Petitioner (Balbir Singh) 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 modifying the Award dated 30.08.2016 (Annexure P-1), passed by the Industrial Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby the reference was answered in favour of the petitioner, however, he was granted a lump sum compensation of Rs. 40,000/- in lieu of reinstatement in service.

Further prayer has been made for directing respondents No. 2 and 3-M/s Punjab State Warehousing Corporation (hereinafter referred to as respondent-Corporation) to reinstate the petitioner with continuity of service

and full back wages or alternatively, the lump sum compensation awarded by the Tribunal below may be enhanced.

2. Briefly, the petitioner raised an industrial dispute by serving a demand notice and upon failure of the conciliation proceedings, the dispute was referred to the Industrial Tribunal, Ludhiana, under Section 2-A and Section 10(1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication.

3. It is the case of the petitioner that he was appointed as a Helper by respondent-Corporation on 01.02.1995 and he was getting average monthly salary of Rs. 2,500/-. It was stated that respondent-Corporation was an 'industry' under Section 2(j) of 1947 Act and petitioner was illegally terminated on 01.06.2008, which amounts to unfair labour practice as respondent-Corporation neither offered nor paid him notice pay and retrenchment compensation. It was next claimed that juniors to the petitioner in the same category were retained in service by respondent-Corporation and other workmen were appointed after termination of services of the petitioner without sending him prior notice, therefore, respondent-Corporation violated the provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act and also violated the mandatory provisions of Model Standing Orders and the rules of natural justice. It was stated that the petitioner could not secure any other job inspite of his best efforts, accordingly, prayer for reinstatement and continuity of services with full back wages was made.

4. Respondent-Corporation contested the claim of petitioner by filing its written statement wherein preliminary objection was raised that the

reference was not maintainable as there was no relationship of workman and employer between the parties. It was stated that the petitioner was not appointed as a workman by respondent-Corporation on 01.02.1995 and he was not getting average monthly salary of Rs. 2,500/-. It was also stated that the petitioner was not employed on regular basis, however, he worked for respondent-Corporation as a casual labourer on requirement basis and respondent-Corporation does not fall under the category of 'industry', therefore, no question of termination of services of petitioner arises; accordingly, prayer for dismissal of claim of the petitioner was made.

The petitioner filed rejoinder and denied the contentions made by respondent-Corporation in its written statement.

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

In order to prove his case, the petitioner appeared as WW1 and made statement by tendering his affidavit Ex.W/1. He further brought on record documents Ex.W/2 to Ex.W/24 relating to his work with respondent-Corporation.

6. On the basis of material/evidence on record, the Tribunal below answered the reference in favour of the petitioner, however, petitioner was granted relief of compensation of Rs. 40,000/- in lieu of reinstatement. The learned Tribunal below held as under :-

“11. I have gone through the record. According to the workman, he was appointed as Helper by the management w.e.f. 1.02.1995 and his average pay was Rs. 2,500/- per month. However, his services

were illegally terminated by the management on 1.06.2008. Whereas, it is the case of the management that the workman worked with the management as a casual labourer on requirement basis only. The workman brought on record documents Ex.W/2 to Ex.W/22 proving his relationship with the management. During cross-examination of MW-1 M.P. Singh, Chief Port Manager, the workman got produced statement of payment of wages Ex.R/1 to Ex.R/3. Ex.R/1 is statement of payment of wages for the period from June, 2005 to May, 2006 showing that he had worked with the management for 196 days. Ex.R/2 is statement of payment of wages for the period from June, 2006 to May, 2007 showing that he had worked with the management for 224 days. Ex.R/3 is statement of payment of wages for the period from June, 2007 to May, 2008 showing that he had worked with the management for 284 days. So, it is evident that during the period of 12 months preceding the alleged date of termination i.e. 1.06.2008, the workman had worked for 284 days with the management. So, the plea of the management that there did not exist relationship of employer and workman between the parties is proved to be false from the above said documents brought on record by the management. As the workman had worked for more than 240 days during the period of 12 calendar months preceding to his termination on 1.06.2008, hence he was in continuous service of the management as per provisions of Section 25-B of the ID Act. The management was required to comply

with the provisions of Section 25-F of the ID Act while terminating his services. Further, the management has not brought on record any document relating to working of the workman with the management prior to the period from June, 2005. Hence, plea of the workman to the effect that he had been working with the management w.e.f. 1.02.1995 is held to be correct. Although, he was working on daily wage basis, but he was being paid wages on monthly basis. Admittedly, neither any notice was served upon him by the management nor he was paid notice pay and retrenchment compensation and the management also did not serve the requisite notice upon the appropriate government. So, the management is guilty of violation of Section 25-F of the ID Act while terminating the services of the workman. Documents Ex.R/1 to Ex.R/3 further shows that his average wages were about Rs. 2,300/- per month.

12. The workman alleged that after his termination from service, the management appointed some other person in his place. But from cross-examination of MW-1 M.P. Singh, it is made out that at present no Helper is working on daily wage basis with the management. So, it is evident that the post of Helper on daily wage basis is not available with the management at present. Services of the workman were terminated on 1.06.2008. He had worked with the management for a period of about 13 years. He served demand notice upon the management on 9.08.2008. Keeping in view all these facts i.e. length of service of the workman, his average wages and the fact that the post of daily wage Helper is not

in existence with the management now, I am of the view that the ends of justice would be met if lump sum compensation is paid to the workman instead of ordering his reinstatement, which is assessed at Rs. 40,000/-. Further, this reference is maintainable. It is not disputed that the claimant is a 'workman' as he was not performing any supervisory, managerial or administrative functions. This Tribunal has got the jurisdiction to try the reference. Accordingly, all these issues are decided in favour of the workman and against the management.

RELIEF

13) In view of the findings on the issues above, the workman is not reinstated into the service of the management and he is awarded a lumpsum compensation of Rs. 40,000/-. The management is directed to make the payment of the aforesaid amount within two months from today, failing which the workman will be entitled to interest at the rate of 6% per annum from the date of this award till realization. No order as to costs. File be consigned to record room.”

7. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.
8. I have heard learned counsel for respective parties and have perused the paperbook with their able assistance.
9. Concededly, the aforesaid Award dated 30.08.2016 (Annexure P-1) has not been impugned by respondent-Management.
10. After arguing for some time, learned counsel for the petitioner confines his prayer only with regard to enhancement of compensation

awarded by the Tribunal below by submitting that the compensation awarded by the Tribunal below is on the lower side.

11. On the other hand, learned counsel for respondent-Corporation 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.

12. 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.....”

13. 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.

14. 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.

15. Keeping in view the aforesaid legal position and taking note of the fact that the petitioner was appointed as a Helper by respondent-Corporation on 01.02.1995; he was getting average monthly salary of Rs. 2,500/-; the services of the petitioner had been terminated in violation of provisions of Section 25-F of 1947 Act, coupled with the fact that respondent-Corporation has not laid any challenge to the aforesaid Award dated 30.08.2016 (Annexure P-1) and also considering that the petitioner has been litigating with respondent-Corporation since 2009; therefore, I am of the opinion that the compensation awarded to the petitioner is on the lower side.

16. 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. 40,000/- to Rs. 2,00,000/-. Respondent-Corporation is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 40,000/-, 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 such time payment is not made.

17. The instant writ petition is disposed of in the aforesaid terms.
18. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

20.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No