

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15798-2014 (O/M)

Date of decision : 22.12.2023

The Superintending Engineer, Public Works Department and another
..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon
others
..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. R.K.S. Brar, Additional A.G. Haryana,
for the petitioners.

Mr. Ravi Kumar Girdhwal, Advocate for
Mr. Sanjay Mittal, Advocate
for respondent No. 2.

None for respondent No. 3.

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HARSH BUNGER, J.

1. Petitioners (hereinafter referred to as petitioner-Department) have filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the impugned Award dated 26.02.2014 (Annexure P-4), passed by the Industrial Tribunal-cum-Labour Court-II, Gurgaon (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute regarding termination of services of respondent No. 2-workman, namely, Ram Bhaj (hereafter referred to as 'respondent-workman') was answered in his favour by holding

respondent-workman entitled to reinstatement in service on the same post which he was holding prior to termination of his services with all legal benefits as he was getting at that time from the date of termination i.e. 16.12.2005 till reinstatement. It was further ordered that after reinstatement, respondent-workman would be entitled to interest at the rate of 12% per annum on the withheld amount of salary from the date the same being due till payment.

2. Briefly, respondent-workman raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to Tribunal below. In the claim statement, respondent-workman stated that he was working on the post of Pump Operator under PWD, Public Health Gurgaon at tubewell water supply pump Buster No. 1 at village Ghamroj, Tehsil Sohana, District Gurgaon since 01.04.2002 continuously, without any break and to the satisfaction of respondent No. 3-Sarpanch Gram Panchayat, Ghamroj and Public Health Department Authorities/Officers. Respondent-workman claimed that his name was maintained in the register of Gram Panchayat, Ghamroj and the concerned JE of Public Health Department, however, his services were terminated without any reason on 16.12.2005. Respondent-workman claimed that at the time of termination of his services, he was getting salary of Rs. 1,000/- per month and after termination of his services, petitioner-Department appointed some other person in his place and he was having no source of income after termination of his services. Accordingly, he prayed for reinstatement in service with consequential benefits.

3. The aforesaid claim of respondent-workman was contested by petitioner-Department, inter alia, on the plea of maintainability of claim of respondent-workman. It was case of petitioner-Department that respondent-workman was neither appointed on the post of Pump Attendant/Operator against any sanctioned post nor his name appeared on the muster roll. It was further stated that there was resolution of Gram Panchayat, Ghamroj regarding any payment being made to respondent-workman. It was categorical case of petitioner-Department that there existed no relationship of master and servant between them and respondent-workman and rather, respondent-workman was an employee of Gram Panchayat, Ghamroj. The claim of respondent-workman was denied and prayer was made for dismissal of the claim statement.

4. It appears that Gram Panchayat, Ghamroj did not appear before Tribunal below and was accordingly proceeded against ex-parte on 20.04.2009.

5. From the pleadings of the parties, following issues were framed:-

“(1) Whether the services of the workman were terminated illegally ? If so as to what relief he is entitled to ? OPW

(2) Whether there exists relationship of master and servant between the parties ? OPW

(3) Whether the present reference is not maintainable ?

(4) Relief.”

6. In order to prove his case, respondent-workman appeared in the witness box as PW1, Mukesh Kumar, Nambardar as PW2 and exhibited

copies of attendance register (Ex. P-2) and copies of receipt of disbursement of salary (Ex. P-3).

On the other hand, petitioner-Department examined Prem Singh Singhal, SDE as MW-1 and Ramesh Chand Tanwar as MW-2.

7. The Tribunal below decided the reference, vide impugned award dated 26.02.2014 (Annexure P-4).

8. In the aforementioned circumstances, this petition has been filed by petitioner-Department before this Court, allowing the claim of respondent-workman.

9. Learned State counsel appearing for petitioner-Department submits that the Tribunal below has erred in law and fact in deciding the reference in favour of respondent-workman by ignoring the fact that there was no relationship of master and servant between petitioner-Department and respondent-workman; therefore, the provisions of Section 25-F of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') are not applicable. Accordingly, it is prayed that the impugned award be set aside.

10. Per contra, learned counsel appearing for respondent-workman has opposed the prayer made by learned State counsel appearing for petitioner-Department by submitting that the Tribunal below has passed a well reasoned and justified award, which does not call for any interference by this Court. It is submitted that the Tribunal below has passed the award on the basis of material/evidence placed before it. Accordingly, prayer has been made for dismissal of the instant writ petition.

11. I have heard learned counsel for respective parties and have

perused the paperbook with their able assistance.

12. From the record, it is observed that on behalf of the Department, one Shri Prem Singh Singhal, SDE, Public Health Engineering, Sub Division Sohna was examined as MW1 and in his cross-examination, he admitted that in village Ghamroj, there are 5 pumps but he could not tell as to how many pump operators were working in the year 2002 to 2005. He further stated that on behalf of the Department, Rs. 1,000/- per month per head were deposited to the Panchayat for operating the tubewell. He admitted that there exists a log book of tubewell which is maintained by the Department. He admitted that Ex.P2 is a log book, on which the signatures of the then J.E. are existing and also the attendance of petitioner (respondent No. 2-workman herein).

Still further, one Shri Ramesh Chand Tanwar was examined as MW2 by the Department and the relevant extract of his cross-examination reads as under :-

“I am doing work in the Department for the last 32 years. I am working under the SDO Sohna for the last 4 yrs. It is correct that I am deposing according to record. It is correct that village Ghamroj comes under me. Since year 2002 to 2005 in village Ghamroj there were 6 water works of our Department. Since year 2002 to 2005 in village Ghamroj, four pump operators were doing as permanent. It is incorrect that one operator works only at one pump. Voluntarily said that one operator can do work at many tubewells if these tubewells are situated nearby. Three tubewells fall nearby. Two booster pumps also are situated nearby

to each other. I cannot say that Rambhaj has worked there during the year 2002 to 2005. From the year 2002 upto 2005 no pump operator was on contract basis. It is correct that during year 2002 to 2005, we used to give fund to the gram Panchayat from the Department. Panchayat can keep pump operator at its own accord. It is correct that we used to receive passed resolution from Panchayat for the appointment of pump operator. It is correct that Ramkaran J.E. was working in our Department at Sohna Sub Division. It is correct that at that time, the charge of village Ghamroj was with above said J.E. It is also correct that since year 2002 to 2003 Ramkaran was doing work as J.E. Now, in village Ghamroj, 8 tubewell have been installed by Govt. on these tubewells of present three operators are regularly in working and three operators are working on contract basis.

It is correct that three working pump operators are connected with the department. There is no any outsider contractor in between Department and employees. I have resolution of Gram Panchayat vill. Ghamroj about the appointment of operator for the department pays which amount to gram Panchayat about pump operator for the same, account is received from gram Panchayat by department. I do not know that petitioner Rambhaj is working as pump operator in village Ghamroj since 1.4.2002 to 16.12.2005. I have no proof according to record that Gram Panchayat has appointed Rambhaj as Pump operator. It is incorrect that I am deposing/adducing evidence in favour of Department as being the employee of the same.”

From the perusal of the aforesaid cross-examination of witnesses

examined by the petitioner-Department, there is no manner of doubt regarding relationship of employer and employee between the petitioner-Department and respondent No. 2-workman.

13. The Tribunal below has also returned the finding that the tubewell where respondent No. 2-workman was working, the same belongs to petitioner-Department and even his salary was being released by petitioner-Department although the same was being disbursed through the agency of Sapranch of Gram Panchayat Ghamroj. Therefore, the finding of the Tribunal below that there exists relationship of employer and employee between the parties is upheld. Further, the petitioner-Department had not produced either before the Tribunal below or before this Court any material to show that before dispensing with the services of respondent No. 2-workman, the provisions of Section 25-B of 1947 Act were complied with. In the absence of any material to indicate that the provisions of Section 25-F of 1947 Act were complied with while terminating the services of respondent No. 2-workman, accordingly, it has been held that the termination of services of respondent No. 2-workman was bad for non-compliance of the provisions of Section 25-F of 1947 Act. At this stage, the question to be considered is regarding the relief for which respondent No. 2-workman is entitled to.

14. At the time of issuance of notice of motion, the enforcement of the impugned award was stayed against the petitioner-Department. A perusal of the paperbook would further indicate that an affidavit dated 24.07.2019 was filed by Executive Engineer, Public Health Engineering Division, Sohna, District Gurugram, wherein it has been stated as under :-

“It is submitted that, the water supply scheme of village Ghamdoj at present is being maintained by the department and the job of operation of tubewell on “part time basis” is being done by Gram Panchayat Ghamdoj for which payment is given by department to the gram panchayat.

Now, department has already given contract to private contractor for augmentation of water supply scheme of village Ghamdoj and completion of work operation and maintenance of entire water supply of village for next five years. As the operation and maintenance of water supply of village Ghamdoj will be done by private contractor in future, therefore the services of respondent is not required by the department.”

15. Apart from the above, there is nothing on record to show that while engaging the services of respondent No. 2-workman, any due procedure was followed nor it has been shown that respondent No. 2-workman was engaged against any sanctioned/regular post. It is well settled by now that wherever termination of services of a workman are held to be bad for non-compliance of provisions of Section 25-F of 1947 Act, the grant of relief of reinstatement and other consequential benefits is not automatic and same depends upon various factors.

16. In Sita Ram v. Moti Lal Nehru Farmers Training Institute, 2008 (2) SCT 660, Hon'ble the Supreme Court held :-

“19. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor, were required to be taken into consideration; the nature of appointment, the period of appointment,

the availability of the job etc. should weigh with the court for determination of such an issue.

20. *This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be re-instated in service in cases of this nature would subserve the ends of justice. {See Jaipur Development Authority v. Ramsahai and Anr., 2006(4) SCT 772 : [(2006)11 SCC 684], Madhya Pradesh Administration v. Tribhuban, 2007(2) SCT 738 : [2007(5) SCALE 397] and Uttranchal Forest Development Corporation v. M.C. Joshi, 2007(2) SCT 562 : [2007(3) SCALE 545].}*

17. In Talwara Coop. Credit and Service Society Ltd. v. Sushil

Kumar, 2008 (4) S.C.T. 382, Hon'ble the Supreme Court held :-

“11. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power under Section 11A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment, viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned etc., should be taken into consideration. For the purpose of grant of back wages; one of the relevant factors would indisputably be as to whether the workman had been able to discharge his burden that he had not been gainfully employed after termination of his service. Some of the other relevant factors in this behalf have been noticed by this Court in G.M. Haryana Roadways

v. Rudhan Singh, 2005(3) SCT 559 : [(2005)5 SCC 591], stating :

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award,

which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

18. Taking note of the fact that the petitioner had continuously worked with petitioner-Department and was drawing monthly salary of Rs. 1,000/- at the time of his alleged termination; the services of the petitioner had been terminated in violation of provisions of Section 25-F of 1947 Act and also considering that respondent-workman has been litigating the petitioner-Department since 2008; I am of the considered opinion that instead of reinstatement in service, a lump sum compensation be awarded to respondent-workman.

19. Accordingly, considering the totality of circumstances and also finding of fact recorded by the Tribunal below that there is relationship of employer and employee between the petitioner-Department and respondent-workman and his services were terminated without complying with the provisions of Section 25-F of 1947 Act, respondent-workman is granted a lump sum compensation of Rs. 2,00,000/-. Petitioner-Departement is directed to pay the compensation of Rs. 2,00,000/- to respondent-workman 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.

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

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

(HARSH BUNGER)
JUDGE

22.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No