

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

CWP-1749-2014 (O&M)
Date of Decision: 15.09.2023

BALWINDER SHARIF

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PATIALA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. S.S. Behl, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J. (ORAL)

Petitioner (Balwinder Sharif) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of the operative part of Award dated 03.10.2013 (Annexure P-6) passed by respondent No.1-Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala (here-in-after referred to as 'the Tribunal'); whereby he has been granted the relief of only compensation instead of re-instatement.

A further prayer has been made for seeking direction to the respondents to re-instate the petitioner with all consequential benefits along with continuity of service and back wages.

2. Briefly, petitioner-Balwinder Sharif, raised an industrial dispute by serving a demand notice dated 24.08.2004 upon respondent Nos.2 and 3, herein. On failure of conciliation proceedings, a reference was made to the learned Labour Court, Patiala. As per the petitioner, he was appointed as a Clerk on daily wages with the Education Board on 15.06.1994 and served it

continuously without any break. The petitioner was paid monthly salary and at the time of termination of his services, his salary was Rs.2300/- p.m. The petitioner claimed that his services were terminated on 21.12.2001 without any reason and juniors to him were retained in service. It was claimed that no compensation was granted to the petitioner and his services were terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act, 1947'). The petitioner also stated that the Education Board had issued a public notice on 18.07.2004, which envisaged that the Board had decided in its meeting dated 13.07.2004 to appoint those daily wage employees on regular basis, who were in service on 23.01.2001 and had served the Board atleast three years upto 23.01.2001 and were otherwise eligible as per the service regulations of the Board except the condition of upper age limit. The petitioner claimed that his name was not there in the seniority list and except him, the services of his junior counterparts were regularized. The names of the juniors, who were stated to be regularized, were also given in the claim petition filed by the petitioner. Petitioner states that no action was taken on his representations; accordingly, he pleaded discrimination and prayed for reinstatement with full back wages and continuity of service along with other consequential benefits.

3. The afore-said claim of the petitioner was contested by the respondent Nos.2 and 3-Education Board by submitting that the Board was not covered under the definition of 'Industry' and the petitioner is not covered under the definition of 'workman' as defined under the Act, 1947. The claim petition was further stated to be barred by Section 23 of the Punjab School Education Board Act, 1969. It was the stand of the Education

Board that the services of the petitioner-claimant along with other employees working on daily wages was dispensed with, in view of the orders passed by this Court while deciding the writ petitions; accordingly, there was no need to follow Section 25-F of the Act, 1947. It was stated that the petitioner-claimant was found guilty in a case of misconduct and accordingly, he was not considered for appointment on regular basis. It was also stated that the services of the employees, mentioned in the representation of the petitioner-claimant, were duly considered and were rejected.

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

5. The learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala, decided the reference vide its impugned order dated 03.10.2013; whereby, the respondent-Board was directed to compensate the petitioner with Rs.35,000/-.

6. Against the afore-said award, the petitioner has approached this Court by way of filing the instant writ petition and after arguing for some time, he 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.

7. On the other hand, learned counsel for respondent Nos.2 and 3 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.

8. I have heard learned counsel for the respective parties and have also gone through the paper book as well as impugned award dated

03.10.2013 (Annexure P-6) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala.

9. Hon'ble the Supreme Court in ***B.S.N.L. Versus Bhurmal 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...”*

10. 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.

11. A perusal of the impugned award dated 03.10.2013 (Annexure P-6) *ibid*, reveals that the following findings have been returned

by the learned Tribunal below :-

(i) By relying upon the observations made by the Hon'ble Apex Court in the case of **Bangalore Water Supply & Sewerage Board etc. Versus R. Rajappa and others 1978 SCC(2) 213**, it was held that the respondent-Board is an 'industry' within the ambit of Section 2(j) of the Industrial Disputes Act, 1947 and the petitioner herein, who was working with the respondent-Board as Clerk is a 'workman' within the ambit of Section 2(s) of the Industrial Disputes Act, 1947.

(ii) That the petitioner-workman worked for 240 days in the year immediately preceding the date of his termination i.e. 21.12.2001 and completed the service as stipulated under Section 25-B of the Industrial Disputes Act, 1947.

(iii) That the services of the petitioner on contract basis were terminated but in spite of that, he was allowed to work under Section A-7 after 20.12.2001 on the condition that perhaps he may be employed with the Board.

(iv) That the services of the workman were terminated without holding any enquiry.

(v) That the services of the petitioner-workman were terminated in violation of Section 25-F of the Industrial Disputes Act, 1947.

(vi) That the petitioner was not the regular employee of the respondent-Board.

(vii) That the proper procedure was not followed while giving appointment to the petitioner.

(viii) That such type of ad hoc/temporary appointments being contrary to the provisions of Articles 14 and 16 of the Constitution of India, are illegal, as has been held by the Hon'ble Supreme Court in **Secretary, State of Karnataka Versus Uma Devi and others 2006(2) LLJ 722**.

(ix) That the services of the petitioner were terminated in the year-2001 and period of 12 years had already elapsed (on the date of passing of the impugned award).

12. Taking note of the findings returned by the learned Tribunal below and also the fact that respondent-Board has not laid any challenge to the award passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Patiala and further considering that the petitioner had been litigating with respondent-Board since long; therefore, I am of the considered opinion 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.35,000/- to Rs.2,00,000/-. The learned Tribunal is directed to pay the enhanced amount to the petitioner within a period of eight weeks 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 till such time payment is not made.

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

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

September 15th, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No