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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17793-2014

Date of decision : 21.08.2023

Tarlochan Singh

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal and Labour Court, Patiala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Amit Kaith, Advocate
for the petitioner.

Mr. Kashmir Singh, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioner (Tarlochan Singh) has 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 06.08.2013 (Annexure P-6), passed by the Industrial Tribunal-cum-Labour Court, Patiala (hereinafter referred to as 'the Tribunal below') to the extent, whereby the relief of reinstatement with continuity of service and full back wages has been denied and instead respondents No. 2 and 3-Gian Jyoti Public School (hereinafter referred to as 'respondent-Management') have been directed to compensate the petitioner-Workman with Rs. 10,000/-.

A further prayer has been made for directing respondent-Management to reinstate the petitioner-Workman with continuity of service and full back wages and to pay the arrears of pay with interest.

2. Briefly, the petitioner-Workman raised an industrial dispute, which was referred to the Tribunal below for adjudication. In the claim statement, the petitioner-Workman claimed that he was appointed as Vehicle Driver for driving the vehicle/buses of respondent-Management used to carry school children/staff of the school and back to their residence. The petitioner-Workman claimed that he remained employed with respondent-Management continuously and uninterruptedly throughout his service from 17.11.2000 to 26.05.2004 when respondent-Management demanded his signatures on blank vouchers/papers and letter pads, which was refused by the petitioner-Workman, whereupon he (petitioner-Workman) was refused to work from the next date i.e. 27.05.2004, however, his signatures were obtained by respondent-Management on the blank payment of wages register and no wages were paid to him. It was categoric case of the petitioner-Workman that he had worked for more than 240 days with respondent-Management when he was terminated. It was further stated that respondent-Management had committed unfair labour practice as juniors to petitioner-Workman were retained in service and fresh drivers have been recruited in his place through advertisement. The petitioner-Workman stated that termination of his services was illegal, malafide, arbitrary and against principles of natural justice. Accordingly, prayer for reinstatement with continuity of service and full back wages was made.

3. The claim of the petitioner-Workman was contested by respondent-Management, wherein apart from taking some preliminary objections, it was stated that the petitioner-Workman was employed as a

driver, however, he was found indulging in activities like misbehaviour with school children, excess consumption of diesel in school vehicles, taking liquor while on duty, rude and abusive behaviour towards students and staff, whereupon the petitioner-Workman was repeatedly advised to improve his work and conduct. It was categoric case of respondent-Management that on 26.05.2004, the petitioner-Workman was called to the office and was asked to explain his conduct and behaviour, whereupon the petitioner-Workman instead of explaining his position, started shouting and stated that he is no more interested in working with the school and further asked respondent-Management to settle his accounts. It was claimed that upon insistence of the petitioner-Workman that his due payments be made immediately and considering the behaviour of the petitioner-Workman, respondent-Management settled his accounts. Thus, the petitioner-Workman willfully left the services of respondent-Management on 26.05.2004. It was stated that the petitioner-Workman thereafter joined Golden Bells Public School, Mohali after willfully leaving the services of respondent-Management. It was also stated that respondent-Management had never terminated the services of the petitioner-Workman, rather it was the petitioner-Workman who willfully left the service of respondent-Management of his own after settling his accounts.

4. From the pleadings of the respective parties, the issues were framed.

5. Upon considering the case of the respective parties as well as evidence/material placed on record, the Tribunal below passed the Award

dated 06.08.2013 (Annexure P-6), whereby the reference was answered in favour of the petitioner-Workman, however, instead of granting the relief of reinstatement with continuity of service and full back wages, the petitioner-Workman was held entitled to compensation of Rs. 10,000/-.

6. In the aforementioned circumstances, the petitioner-Workman has filed the instant writ petition before this Court.

7. I have heard learned counsel for the respective parties and also perused the paper book with their able assistance.

8. The Tribunal below, while passing the impugned Award, has held as under :-

“14. Evidence on record and arguments of both the ARs of the parties reveal that workman was engaged as driver by the respondent and he worked from 17.11.2000 to 26.05.2004. Thus, it is crystal clear that workman worked for more than 240 days in the year immediately preceding the date of his termination.

15. The case of the respondent is that workman himself left the work after settling his account with the respondent on 26.05.2004 and copy of payment register regarding this is Ex.M6. On the other hand, case of the workman is that his signatures were obtained on payment of wages register but he was not paid anything, rather terminated from service on 26.05.2004. It is further contention of AR of the management that workman was indulging in activities like misbehavior with school children, excess consumption of diesel in school vehicles, taking liquor while on duty, rude and

abusive behavior towards the students and the staff. He was also given advisory notes regarding this vide Ex.M3 to Ex.M5. He agreed to improve his behavior.

16. MW2 Prabhjit Kaur admitted as correct that no charge sheet, notice was given to the workman nor any enquiry was conducted at the time of his termination. If the workman was abusive in his behavior, he should have been charge sheeted. However, no charge sheet was given to him.

He was not medically examined for taking liquor during duty hours by the school management, as stated by MW2, Prabhjit Kaur. The contention of AR of the management cannot be accepted that workman himself left the job as he settled his account with the respondent, because there is no writing by the workman seeking clearance of his account is proved. This means that if he settled his account with the respondent that was on the asking of the respondent, because had the workman asked for settlement of his account with respondent he should have moved application to the respondent, to this effect. Moreover, had the workman himself left the job, he would have submitted his resignation. No resignation letter was submitted by the workman, as admitted by MW2 Prabhjit Kaur. So, it is clearly proved that workman was terminated by the respondent in violation of Section 25F of the IDA, 1947.

17. However the documents Ex.M7 and Ex.M8 reveal that the workman remained employed after

his termination from the respondent management and this fact is also admitted by Tarlochan Singh workman in his cross examination. Workman also stated that he received the wages for the work he has worked with the respondent. Workman also stated that he received the wages for the work he has worked with the respondent. Workman also stated his monthly expenses are Rs. 5000-6000/- p.m.

18. Thus he has continuously remained in employment, therefore, it is a fit case for awarding compensation to the workman in place of order of reinstatement with back wages.

19. Taking into consideration the fact that the workman worked with the respondent on 17.11.2000 to 26.05.2004 @ Rs. 10000/- (Ten thousand only) is directed to be paid to the workman by the respondent. As the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this court by the Appropriate Government for adjudication, the reference is maintainable. Accordingly, issue No. 1 is answered in favour of the workman.

RELIEF:

20. In the light of my findings regarding above noted issues, this reference is hereby answered in favour of workman and against the respondent and respondent is directed to compensate the workman with Rs. 10000/- (Rupees ten thousand only) within 45 days of the publication of the award, failing which the workman will be entitled to the

*awarded amount along with interest @ 6% p.a.
from the date of passing of the award till
realization. File consigned to the record room.”*

9. Concededly, the services of the petitioner-Workman have been held to be terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). The respondent-Management has not laid any challenge to the impugned award herein whereby compensation was awarded to the petitioner-Workman.

10. The latest legal trend is award of compensation in place of reinstatement. In the case of BSNL V. Man Singh; (2012) 1 SCC 558, the Apex Court held that when the termination is set aside because of violation of Section 25-F of 1947 Act, it is not necessary that the relief of reinstatement be given as a matter of right.

11. In Incharge Officer V. Shankar Shetty: (2010) 9 SCC 126, it was inter alia held that in those case where the workman had worked on daily wage basis and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

In Shankar Shetty's case (supra), the Hon'ble Apex Court reiterated the trend by referring to the various judgments and inter alia held as under :-

“2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25 F of the Industrial Disputes Act, 1947 (for short “the ID Act”)? The

course of decisions of this Court in recent years has been uniform on the above question.

3. *In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court - namely, U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey, Uttranchal Forest Development Corporation vs. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sita Ram v. Motil Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramasahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp. 330 and 335 paras 7 and 14)*

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in

violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee".

4. Jagbir Singh¹ has been applied very recently in Telegraph Department v. Santosh Kumar Seal wherein this Court stated :
(SCC p.777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice".

12. It is worthwhile to refer to the decision of the Hon'ble Apex Court in BSNL Versus Bhurumal, 2014 (3) SCT 49; wherein, the Apex Court has clearly held that when there is violation of Section 25-F of 1947 Act, the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the ends of justice. The Hon'ble Supreme Court observed 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.”

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. The perusal of the above judgments makes it clear that new established trend is grant of compensation in lieu of reinstatement. The order of reinstatement can be granted only in exceptional cases.

14. In the present case, the services of the petitioner-Workman were termination way back in the year 2004 and as per the case of the petitioner-Workman, he had worked from 17.11.2000 to 26.05.2004 with respondent-Management. Around 19 years have lapsed since the services of the petitioner-Workman were terminated in the year 2004. Moreover, considering the totality of the circumstances, I consider that the order for reinstatement in service may not be passed in this case. However, the compensation awarded by the Tribunal below is to the lower side. In my considered view, interest of justice would be met if the compensation is enhanced from Rs. 10,000/- to Rs. 1,00,000/-, to be paid to the petitioner-Workman within a period of eight weeks from the date of receipt of certified

copy of this order, failing which the petitioner-workman shall be entitled to claim simple interest at the rate of 6% per annum till such time payment is not made.

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

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

(HARSH BUNGER)
JUDGE

21.08.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No