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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-17900-2014
Date of Decision: 31.07.2023

Sube Singh

..... Petitioner

Versus

The Divisional Forest Officer, Territorial, Hisar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ranvir S. Chauhan, Advocate
for the petitioner.

Mr. Satish Singla, AAG, Haryana.

HARSH BUNGER J. (ORAL)

1. The petitioner (Sube Singh) has filed the instant writ petition under Article 226/227 of the Constitution of India seeking writ in the nature of certiorari for quashing the impugned award dated 14.09.2010 (Annexure P-1), to the extent, whereby the petitioner has been held not entitled for reinstatement and instead, the petitioner has been awarded compensation of Rs.68,000/-. A further prayer has been made for issuing writ in the nature of mandamus, directing respondent No.1 to reinstate the

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petitioner with continuity of service along with full back wages.

2. Briefly, the petitioner raised an industrial dispute which was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Hisar. It was claimed by the petitioner that he was engaged by respondent No.1 (The Divisional Forest Officer, Territorial, Hisar) as Beldar-cum-Mali on 01.07.1985 and he continuously worked up to 25.07.2002. Petitioner claimed that he worked in Hansi and Bass Block in Hansi Range and also in Narnaund Block and his service record remained unblemished, however, his services were illegally terminated on 26.07.2002 without issuing any notice or paying any retrenchment compensation and at the time of the said termination he was being paid a sum of Rs.2500/- per month as against his entitlement to the grade of 2550/- - 3200/-. Petitioner has also claimed that his juniors had been retained and fresh appointments had also been made and thus the Department/Management had adopted unfair labour practice and his services have been terminated in violation of the principle of last come first go. Accordingly, prayer was made for reinstatement in service with full back wages and continuity of service and other consequential benefits.

3. The aforesaid claim of the petitioner-workman was contested by the respondent-Department/Management on the plea that he was never appointed as Beldar-cum-Mali on daily wage basis. It was stated that the petitioner-workman was hired on contract basis to complete the specific work by the Department/Management and the petitioner never worked with the Forest Guard and range of Hansi and Narnaund block. It was denied that the services of the petitioner-workman were retrenched on 26.07.2002 and it

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was also denied that no new workers had been appointed. It was stated that there was no violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It was disputed that the petitioner-workman had rendered continuous service in the last preceding 12 months of the calendar year, accordingly, prayer for dismissal of the claim was made.

4. On the basis of pleadings of the parties, issues were framed and the parties led their respective evidence.

5. After considering the case of the respective parties and also the material/evidence placed on record, the Tribunal below passed an award dated 14.09.2010, whereby it was held that termination of the services of the petitioner-workman was in violation of Section 25-F of the Industrial Disputes Act, however, the petitioner was only granted the compensation of Rs.68,000/-.

6. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court.

7. Learned counsel for the petitioner submits that learned Tribunal below has erred in law in fact and not granting the necessary relief of reinstatement with continuity of service and full back wages to the petitioner, despite holding that the services of the petitioner were terminated in violation of Section 25-F of the Industrial Disputes Act. It is submitted that learned Tribunal below has failed to consider and appreciate the evidence/material placed on record whereby, it is fully established that there was violation of provisions of Section 25-G of the Industrial Disputes Act as well. It is further submitted that even otherwise, the Tribunal below has granted very meager amount of Rs.68,000/- towards compensation.

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However, after arguing for some time, learned counsel for the petitioner has restricted his claim only *qua* enhancement of compensation awarded by the Tribunal below.

8. On the other hand, learned State counsel appearing for respondent No.1-Department/Management has opposed the prayer of the petitioner by submitting that the award passed by the Tribunal below is justified and does not call for any interference. It is submitted that a sufficient amount of Rs.68,000/- has been awarded to the petitioner. After considering the relevant fact, accordingly prayer for dismissal of the Writ Petition has been made.

9. I have heard learned counsel for the parties and perused the paper book.

10. Concededly, respondent No.1-Department/Management has not laid challenge to the award passed by the Tribunal below, especially the finding that the services of the petitioner were terminated in violation of Section 25-F of the Industrial Disputes Act.

11. 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 not 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...”

12. 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.

13. Taking note of the fact that the petitioner-workman was appointed as Beldar-cum-Mali on 01.07.1985 and he worked up to 25.07.2002 with respondent No.1- Department/Management continuously and his last drawn salary at the time of termination was Rs. 2,500/- per month and the services of the petitioner-workman had been terminated in violation of provisions of Sections 25-F and 25-G of the 1947 Act, coupled with the fact that respondent No. 1-Department/Management has not laid any challenge to the aforesaid Award dated 14.09.2010 (Annexure P-1); therefore, I am of the considered opinion that the compensation awarded to the petitioner-workman is on the lower side.

14. Accordingly, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner by the Industrial Tribunal, Hisar is enhanced from Rs. 68,000/- to Rs. 2,00,000/-. The

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respondent-Management is directed to pay the enhanced amount to the petitioner (after adjusting Rs.68,000/- awarded by the Tribunal below, if already paid) within a period of 3 months from the date of receipt 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 @ 6% per annum till such time payment is not made.

15. The instant petition is accordingly disposed of with the aforesaid modification in the impugned award passed by the Labour Court.

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

31.07.2023
Himani

(HARSH BUNGER)
JUDGE

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|------------------------------|---|--------|
| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |