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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12009-2018 (O/M)

Date of decision : 26.07.2023

Baljinder Singh

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and another Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Dharminder Singh Randhawa, Advocate
for the petitioner.

None for respondent No. 2.

HARSH BUNGER, J.

1. Petitioner (Baljinder 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 for quashing the Award dated 28.03.2018 (Annexure P-1), passed by the Industrial Tribunal, Patiala (respondent No. 1 herein) whereby the reference was answered in favour of the petitioner by granting compensation amounting to Rs. 12,000/-.

Further prayer has been made for directing respondent No. 2- Management to reinstate the petitioner with full back wages alongwith interest.

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, Patiala under Section 2A 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 Security Guard with M/s Ashoka Nursing (respondent No. 2-Management) and was drawing monthly salary of Rs. 9,500/- at the time of his illegal termination on 10.03.2015. It was claimed that the petitioner continuously worked with respondent No. 2-Management for the period from 03.09.2013 to 09.03.2015. It was further claimed that fresh appointment was made and even juniors to the petitioner were retained by respondent No. 2-Management after termination of services of the petitioner. The petitioner further claimed that the termination of services of the petitioner amounts to unfair labour practice under the 1947 Act and the same was in violation of provisions of Sections 25-F, 25-G and 25-H of 1947 Act. It was categorically claimed that the petitioner had worked for more than 240 days with respondent No. 2-Management in a calendar year prior to his termination. Accordingly, prayer for reinstatement in service with back wages and continuity of services from the date of his illegal termination was made.

4. The claim of the petitioner was contested by respondent No. 2-Management by filing its written statement. The petitioner-workman filed the replication to the written statement filed by respondent No. 2-Management. In support of his claim, the petitioner-workman himself appeared as WW1 and tendered his affidavit (Ex.W2) in support of his examination in chief corroborating the averments of claim statement. He also

proved Demand Notice (Ex.W3), statement of claim (Ex.W4) and also tendered document (Ex.W1). However, when the case was at the stage of cross examination of petitioner-workman, none appeared on behalf of respondent No. 2-Management and respondent No. 2-Management was proceeded against ex-parte.

5. The Industrial Tribunal, Patiala, vide its Award dated 28.03.2018 (Annexure P-1), inter alia, held as under :-

- (i) The petitioner-workman worked with respondent-Management for 240 days in the year immediately preceding the date of his termination ;
- (ii) The petitioner-workman was not paid any compensation, notice, notice pay in lieu of notice ; and
- (iii) The services of the petitioner-workman have been terminated in violation of the provisions of Section 25-F of the 1947 Act.

6. Considering the totality of the circumstances, the learned Presiding Officer, Industrial Tribunal, Patiala granted the following relief :-

“9. In the light of the above discussion, it is held that workman is not entitled to relief of reinstatement with back wages. Taking into consideration the fact that the services of workman were terminated in violation of the provisions of Section 25-F of the I.D.A. 1947 and that he was drawing Rs. 9500/- P.M. as salary at the time of his termination and that he worked with the respondent for the period from 03.09.2013 to 10.03.2015, so he

is granted compensation worth Rs. 12000/- (Rupees twelve thousand only) and the same is directed to be paid to the workman by the Respondent.

10. This reference is hereby answered in favour of workman and against respondent and respondent is directed to compensate the workman with Rs. 12000/- (Rupees twelve 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% per annum, from the date of passing of the award till realization.”

7. Against the aforesaid Award dated 28.03.2018 (Annexure P-1), the petitioner-workman approached this Court by filing the instant writ petition.

8. While issuing notice of motion, a coordinate Bench of this Court passed the following order :-

“ Limited grievance raised by petitioner is that compensation granted by the tribunal is on the lower side. He relies upon judgment reported as Lachhman Dass vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar and others in CWP No. 15778 of 2015 decided on 23.04.2018.

Notice of motion for 24.07.2018.”

9. Despite service, none has put in appearance on behalf of respondent No. 2-Management.

10. I have heard learned counsel for the petitioner and have also perused the paper book as well as the impugned Award dated 28.03.2018

(Annexure P-1), passed by the learned Industrial Tribunal, Patiala.

11. 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.

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 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.

13. Taking note of the fact that the petitioner-workman was appointed as a Security Guard and he worked from 03.09.2013 to 10.03.2015 with respondent No. 2-Management continuously and his last drawn salary at the time of termination was Rs. 9,500/- per month and the services of the petitioner-workman had been terminated in violation of provisions of Sections 25-F of 1947 Act, coupled with the fact that respondent No. 2-Management has not laid any challenge to the aforesaid Award dated 28.03.2018 (Annexure P-1) and petitioner-workman has been litigating with respondent No. 2-Management since the year 2015; 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, Patiala is enhanced from Rs. 12,000/- to Rs. 1,00,000/-. Respondent No. 2-Management is directed to pay the enhanced amount of compensation (after adjusting Rs. 12,000/- if paid) to the petitioner-workman within a period of three months from the date of receipt/presentation of certified copy of this order. In case of non-payment of amount to the petitioner-workman within the stipulated period, 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. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

26.07.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No