

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

CWP-18380-2015 (O&M)
Date of Decision: 01.12.2023

KARNAIL SINGH

...Petitioner

Versus

INDUSTRIAL TRIBUNAL, PATIALA THROUGH
ITS PRESIDING OFFICER AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vikas Singh, Advocate
and Mr. A.S. Pannu, Advocate
for the petitioner.

Ms. Ekta Chauhan, Advocate
and Mr. Varun Katyal, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Karnail Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of an appropriate writ for quashing the Award dated 17.09.2013 (Annexure P-1) passed by learned Presiding Officer, Industrial Tribunal, Patiala; to the extent whereby relief of reinstatement with all consequential benefits was declined and the petitioner has been granted compensation of Rs.20,000/- only.

A further prayer has been made by the petitioner to direct the respondents to reinstate him in service with continuity of service and back wages.

2. Briefly, the petitioner-workman (Karnail Singh) raised an industrial dispute by serving a demand notice dated 31.12.2001; however, on failure of conciliation proceedings, the dispute was referred to the Industrial

Tribunal, Patiala (here-in-after referred to as 'the Tribunal') under Sections 2-A and 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act').

3. In the claim statement, it was stated by the petitioner-workman that he joined the respondent-department on 01.03.1989 and he continuously worked for the period from 01.03.1989 to 30.12.1991. However, the services of the petitioner-workman were illegally terminated on 31.12.1991, without holding any enquiry or giving show cause notice. It was pleaded that at the time of termination of services of the petitioner-workman, he was drawing Rs.1200/- p.m. as salary and he had worked for more than 240 days in last calendar year. It was further pleaded that juniors to the petitioner-workman were retained in service and even new appointments have been made by the respondent after the termination of services of the petitioner-workman and he is unemployed from the date of his termination. It was therefore pleaded that termination of service of petitioner was in violation of provisions of Sections 25-F, 25-G and 25-H of the 1947 Act. Accordingly, prayer for reinstatement with continuity of service and full back wages was made.

4. Notice of reference was issued to the respondent-department and they contested the claim of the petitioner-workman, *inter alia*, on the ground that the reference is bad for non-joinder/mis-joinder of the parties.

Upon merits, it was stated that the petitioner-workman worked on daily wages and in the month of May, 1989 for 29 days and in the month of December 1991, he was being paid wages of Rs.21.50 paisa per day; accordingly, he was paid Rs.691/- for that month. It was also the case of the respondent-department that the petitioner-workman himself absented from duty and never worked after 30.12.1991, with any of the respondents. It was

also stated that the petitioner-workman had not worked with the respondent for 240 days in the preceding twelve calendar months; accordingly, prayer for dismissal of the claim was made.

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

6. After considering the material/evidence available on the record, the Tribunal below vide impugned Award dated 17.09.2013 (Annexure P-1), answered the reference in favour of the workman, by holding that the termination of the services of the petitioner-workman was in violation of the provisions of Section 25-F of the 1947 Act. However, the Tribunal below also held that since petitioner-Karnail Singh was not a regular employee of the respondent-department and proper procedure was not followed while giving him employment; therefore, the appointment of the petitioner was contrary to the provisions of Articles 14 and 16 of the Constitution of India. Accordingly, it was held that the petitioner is not entitled for reinstatement with back wages and instead, the Tribunal granted compensation of Rs.20,000/- to the petitioner-Workman.

7. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner has, *inter alia*, submitted that once the Tribunal had reached the conclusion that the services of the petitioner-workman had been terminated in violation of the provisions of Section 25-F of the 1947 Act; accordingly, the petitioner was entitled to relief of reinstatement with full back wages and continuity of service. It is, therefore, contended that the Tribunal below has erred in law and fact in not granting the necessary relief and rather awarding a very meagre amount of

Rs.20,000/-, as compensation. Accordingly, it was prayed that the impugned Award dated 17.09.2013 (Annexure P-1) be modified and necessary relief of re-instatement with full back wages and continuity of service be granted in favour of the petitioner.

9. On the other hand, learned counsel appearing for the respondent-Department has opposed the prayer of the petitioner on the ground that as per various judicial pronouncements, when the termination of services of a workman are held to be in violation of Section 25-F of the 1947 Act then the grant of reinstatement and other consequential benefits is not automatic and award of compensation has been considered as appropriate relief. Therefore, it is submitted that the Award passed by the Tribunal below is fully justified and legal and does not call for any interference, in exercise of writ jurisdiction by this Court as the necessary relief already stands granted to the petitioner. Accordingly, prayer has been made for dismissal of the claim of the petitioner.

10. I have heard learned counsel for the respective parties and have also gone through the paper book as well as impugned award dated 17.09.2013 (Annexure P-1) passed by the learned Tribunal below.

11. In ***Incharge Officer v. Shankar Shetty: (2010) 9 SCC 126***, it was *inter alia* held that in those cases 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 the decisions of this Court in recent years has been uniform on the above question.

*3. In **Jagbir Singh v. Haryana State Agriculture Mktg., 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 Corpn. Ltd. v. Uday Narain Pandey**, **Uttaranchal Forest Development Corpn. v. M.C. Joshi**, **State of M.P. v. Lalit Kumar Verma**, **M.P. Admn v. Tribhuban**, **Sita Ram v. Moti Lal Nehru Farmers Training Institute**, **Jaipur Development Authority v. Ramsahai**, **GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchyat, Gajraula** and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14).*

"7. It is true that the earlier view of this Court articulated in many decision 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 Singh has been applied very recently in **Telegraph Deptt. 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 **BSNL vs Bhurumal, 2014(3) SCT 49**; wherein, the Apex Court has clearly held that when there is violation of Section 25-F of the Act, 1947 the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the end 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 **Mahboob**

Deepak v. Nagar Panchayat, Gjraula: (2008) 1 SCC 575, Sita Ram v. MotiLal Nehru Farmers Training Institute: (2008) 5 SCC 75, GDA v. Ashok Kumar: (2008) 4 SCC 261.

13. The perusal of the above judgments make 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. Coming to the case in hand, the Tribunal below has returned the following findings :-

“14. Thus, the above detail reveals that MW1 Naresh Sharma produced the muster rolls Ex.M1 to Ex.M31, which also included the muster rolls for the months of January, March, May, July and November 1991. However, he is silent about the detail of these months and days of work in his examination in chief and regarding the months of February, April, June, August, September, October and December 1991, he in his examination in chief has give detail of working days of workman and it seems that detail of months of January, March, May, July and November 1991 was withheld by MW1 Naresh Sharma in his examination in chief only to suppress the facts and Ex.M1 to Ex.M31 were muster rolls for the period of more than 12 months, immediately preceding the date of termination. Thus, as discussed above, the detail reveals that the workman has worked for 260 days till December 1991 the month in which he worked for 25 days as stated by MW1 Naresh Kumar in his examination in chief. Thus, he worked for more than 240 days in the year immediately preceding the date of his termination, as prescribed under Section 25-B of the I.D.A., 1947. No compensation was paid to the workman as admitted by MW1 in his cross examination. No letter was written to the workman directing him to join duty as

stated by MW1 Naresh Kumar in his cross examination. Therefore, the plea that workman himself abandoned the work, cannot be accepted.

As the workman completed more than 240 days of service in the year immediately preceding the date of his termination and his services were terminated without any enquiry, charge-sheet, notice or payment of compensation, termination of services of the workman is in violation of provisions of Section 25-F of the I.D.A., 1947.

15. *However, non-compliance of the provisions of Section 25-F of the Industrial Disputes Act-1947 although may lead to the grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would not mean that such relief is to be granted automatically or as a matter of course, as has been held by the Hon'ble Supreme Court in **Haryana State Electronics Development Corporation Ltd, Vs. Mamni, 2006(2) LLJ Page. 744 (SC)**. In the said case Hon'ble Supreme Court modified the impugned Award by directing that the workman shall be compensated by payment of Rs.25000/- in stead of order of reinstatement with back wages.*

16. *Karnail Singh was not the regular employee of the respondent department. Proper procedure was not followed while giving him employment. Such type of ad-hoc/temporary appointments being contrary to the provisions of Article 14 and 16 of the Constitution are illegal, as has been held by the Hon'ble Supreme Court in **Secretary, State of Karnatka Vs. Uma Devi and other 2006(2) LLJ Page 722(SC)**. Even, otherwise, in the instant case the services of the workman were terminated in 1991 and period of 22 years has already lapsed.*

17. *In the light of the above discussion, it is held that workman Karnail Singh 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 worked with the respondent for about 2 years and that this reference remained pending for about 11 years, interests of justice shall be served if compensation worth Rs.20000/- (Rupees twenty thousand only) is directed to be paid to the workman by the Respondent. However, 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 proper in the eyes of law. Accordingly issues No.1 & 2 are answered against the respondents and in favour of the workman and issue No.3 is answered in favour of the workman and against the respondents.*

RELIEF

18. *In the light of my finding 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.20000/- (Rupees twenty 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. File be consigned to the record room."*

15. After perusal of the above extracted findings returned by the learned Tribunal below, I am of the considered view that in the light of aforesaid judicial pronouncements, the relief of reinstatement and

consequential benefits has been rightly not granted by the learned Tribunal below. However, taking note of the fact that the petitioner had worked from 01.03.1989 to 30.12.1991 for almost 02 years and 09 months and his services were terminated in violation of the provisions of Section 25-F of the 1947 Act; coupled with the fact that the respondent-Department has not laid any challenge to the award passed by the Tribunal and also that the services of the petitioner were terminated almost 32 years ago and he had been litigating with the respondent-Management since 1992; 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.20,000/- to Rs.1,00,000/-. The respondent-Department is directed to pay the enhanced amount to the petitioner (after adjusting Rs.20,000/- awarded by the Tribunal below, if already paid) within a period of three months 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.

16. Accordingly, the Award dated 17.09.2013 (Annexure P-1) passed by the Tribunal stands modified to the above extent.
17. The instant writ petition is disposed of in the afore-stated terms.
18. All pending application/s, if any, shall also stand closed.

December 01, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No