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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20046-2015 (O/M)
Date of decision : 16.12.2023

Raj Kumar

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Patiala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. M.K. Dogra, Advocate
for the petitioner.

Mr. Sandeep Khunger, Advocate
for respondents No. 2 and 3.

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HARSH BUNGER, J.

1. Petitioner (Raj Kumar) 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 02.08.2013 (Annexure P-7), passed by the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby relief to the extent of reinstatement in service with back wages has been declined and only a meager compensation has been awarded to the petitioner.

2. Briefly, the petitioner raised an industrial dispute by serving demand notice dated 17.01.2003 and upon failure of the conciliation proceedings, the dispute was referred to the Tribunal below under

Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication.

3. The petitioner claimed that he had continuously worked with respondents No. 2 and 3 (hereinafter referred to as respondent-Trust) for 8 years i.e. from 01.06.1994 to 30.05.2002 as Beldar-cum-Sweeper. It was claimed that the services of the petitioner have been wrongfully, illegally, malafidely, arbitrarily and unjustly terminated on 31.05.2002 without issuing any notice, charge sheet, enquiry and without giving any compensation. It was further claimed that at the time of termination of his services, the petitioner was getting Rs. 2,125/-. It was alleged that juniors to the petitioner have been retained in service by respondent-Trust. It was stated that since the termination of his services, the petitioner remained unemployed. Therefore, petitioner claimed that the termination of his services was in violation of provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act. Accordingly, prayer for reinstatement in service with continuity of services and back wages alongwith consequential benefits was made.

4. The aforesaid claim was contested by respondent-Trust by filing its written statement wherein preliminary objection was taken that the reference is bad in law on the ground of mis/non-joinder of necessary party (Chairman/Executive Officer). It was categorical stand of respondent-Trust that the petitioner was engaged purely temporarily on daily wage basis as per the requirement of the temporary work. It was stated that respondent-Trust is not an industry under the provisions of 1947 Act. It was stated that the petitioner was not a workman under the provisions of 1947 Act and he was paid wages

for the days he actually performed duty. It was stand of respondent-Trust that the petitioner left the services of his own and respondent-Trust did not terminate the services of the petitioner. It was stated that when the petitioner did not report for duty, his name was struck off from the daily wage muster roll, as per procedure adopted by respondent-Trust for the daily wagers.

On merits, all the averments of statement of claim were denied being wrong and it was stand of respondent-Trust that the petitioner was engaged some time as Beldar or some time as Sweeper against different temporary posts as daily wager. It was stated that in view of imposition of ban by the Government on new recruitment, no new person has been engaged/appointed.

Replication to the written statement was not filed.

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

6. Considering the material/evidence available on record, the Tribunal below returned the following findings :-

- (a) Respondent-Trust is an 'industry' within the meaning of Section 2 (j) of 1947 Act.
- (b) Petitioner had worked for more than 240 days in the year immediately preceding the date of his termination.
- (c) The plea of abandonment of work by the workman not proved.
- (d) No enquiry conducted against the workman.

- (e) Services of workman were terminated in violation of provisions of Section 25-F of 1947 Act.
- (f) Workman was engaged purely on temporary basis on daily wages as per requirement of work.
- (g) No appointment letter given to workman.

7. The Tribunal below granted the following relief :-

“17. Taking into consideration the fact that workman worked with the respondent from 01.06.1994 to 30.05.2002 for about 8 years and that at the time of his termination, he was drawing Rs. 2000/- P.M. as wages and that the reference remained pending in the Court for about 9 years and that he raised industrial dispute by way of filing Demand Notice Ex.W15 on 17.01.2003 i.e. within seven months of termination, interest of justice shall be served if compensation worth Rs. 30000/- (Rupees thirty thousand only) is awarded to the workman.

Since the workman raised industrial dispute by way of filing demand notice Ex.W14 and the dispute was referred to this Court by Appropriate Authority for adjudication, therefore the reference is proper and maintainable. Accordingly, issue No. 2 and 4 are answered against the respondent and in favour of the workman and issue No. 5 is answered in favour of the workman and against the respondent.

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. 30000/- (Rupees thirty thousand only) within 45 days of the publication of the award, failing which the workman will be entitled to the awarded amount alongwith interest @ 6% per annum, from the date of passing of the award till realization. File be consigned to the record room.”

8. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court against the impugned Award dated 02.08.2013 (Annexure P-7).

9. I have heard learned counsel for respective parties and have perused the paperbook with their able assistance.

10. Concededly, the aforesaid Award dated 02.08.2013 (Annexure P-7) has not been impugned by respondent-Department.

11. After arguing for some time, learned counsel for the petitioner confines his prayer only with regard to enhancement of compensation awarded by the Tribunal below by submitting that the compensation awarded by the Tribunal below is on the lower side.

12. On the other hand, learned counsel appearing for respondent-Trust 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 instant writ petition has been made.

13. 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....”

14. 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. In view of ratio of the judgments, referred to above, grant of compensation instead of reinstatement was the proper remedy.

15. 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.

16. Taking note of the fact that the petitioner has worked as a Beldar-cum-Sweeper with respondent-Trust from 01.06.1994 to 30.05.2002 on temporary basis; the services of the petitioner had been terminated in violation of provisions of Section 25-F of 1947 Act and the termination took place more than 20 years ago; coupled with the fact that respondent-Trust has not laid any challenge to the aforesaid Award dated 02.08.2013 (Annexure P-7) and also considering that the petitioner has been litigating

with respondent-Trust since 2004; I am of the considered opinion that the compensation awarded to the petitioner is on the lower side.

17. Considering the totality of circumstances, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner by the Tribunal below is enhanced from Rs. 30,000/- to Rs. 2,00,000/-. Respondent-Trust is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 30,000/-, if already paid), within a period of three months from the date of receipt/production of certified copy of this order. In case of non-payment of aforesaid 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 the time such payment is not made.

18. The instant writ petition is disposed of in the aforesaid terms.

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

(HARSH BUNGER)
JUDGE

16.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No