

231

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16035-2017 (O/M)

Date of decision : 26.07.2023

T.R. Puri

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Pataiala and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. G.L. Bajaj, Advocate for
Ms. Ritu Bairagi, Advocate
for the petitioner.

Mr. Akhil Kashyap, Advocate for
Mr. Parveen K. Kataria, Advocate
for respondents No. 2 and 3.

HARSH BUNGER, J.

1. Petitioner (T.R. Puri) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 30.09.2016 (Annexure P-3), passed by the Industrial Tribunal, Patiala (respondent No. 1 herein) whereby the reference was answered in favour of the petitioner-workman while granting compensation amounting to Rs. 21,000/- in lieu of reinstatement in service alongwith other consequential benefits.

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'). The reference reads as under :-

“Whether termination of services of workman T.R. Puri by the respondent is illegal and un-justified ? If yes, what relief the workman is entitled to ?”

3. As per the claim statement, it was pleaded that the petitioner-workman was engaged by respondents on 20.10.2012 as a Foreman and was drawing salary of Rs. 35,000/- per month at the time of illegal termination on 23.10.2013. It was claimed that the petitioner-workman continuously worked with respondents for the period from 20.10.2012 to 22.10.2013. It was stated that the petitioner-workman approached respondents No. 2 and 3 for duty on 23.10.2013, however, he was not provided duty and was informed that his services stand termination w.e.f. 23.10.2013. It was further claimed that fresh appointment was made and even juniors to the petitioner-workman were retained by respondents-Management after termination of services of the petitioner. The petitioner further stated that the termination of his (petitioner's) services amounts to unfair labour practice under the 1947 Act. It was claimed that the termination of services of the petitioner-workman was in violation of provisions of Sections 25-F, 25-G and 25-H of 1947 Act. It was categorically claimed that the petitioner-workman had worked for more than 240 days with respondent-Management in the year immediately preceding the date of his termination. It was further claimed that the job, on which the petitioner-workman was engaged, was a continuous and permanent job and that the

services of the petitioner-workman were terminated without any notice, chargesheet, inquiry or payment of any compensation. Accordingly, it was prayed that the petitioner-workman was entitled to continuity of service with full back wages from the date of his illegal termination.

The notices of the reference were issued to respondents through RCs, however, respondents failed to appear before the learned Tribunal below, despite due service and vide order dated 07.05.2015, respondents were proceeded against ex-parte.

To prove his claim, the petitioner-workman himself appeared as WW1 and tendered his affidavit Ex.W1 in support of his ex-parte evidence wherein he reiterated and corroborated the averments made in the claim statement.

4. The Industrial Tribunal, Patiala, vide its Award dated 30.09.2016 (Annexure P-3), inter alia, held as under :-

- (i) The petitioner-workman worked with respondents 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.

5. Considering the material/evidence on record, the learned Presiding Officer, Industrial Tribunal, Patiala held as follows :-

“8. 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. 35000/- P.M. as salary at the time of his termination and that he worked with the respondents for the period from 20.10.2012 to 22.10.2013, interests of justice shall be served if compensation worth Rs. 21000/- (Rupees twenty one thousand only) is directed to be paid to the workman by the respondents.

9. This reference is hereby answered in favour of workman and against respondents and respondents are directed to compensate the workman with Rs. 21000/- (Rupees twenty one 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.”

6. Against the aforesaid Award dated 30.09.2016 (Annexure P-3), the petitioner-workman approached this Court by filing the instant writ petition.

7. Concededly, the aforesaid Award dated 30.09.2016 (Annexure P-3) has not been impugned by respondents No. 2 and 3 herein.

8. I have heard learned counsels for the parties and have also perused the paper book as well as the impugned Award dated 30.09.2016 (Annexure P-3), passed by the learned Industrial Tribunal, Patiala.

9. After arguing for some time, learned counsel for the petitioner-workman confines his prayer only with regard to enhancement of compensation as awarded by the Industrial Tribunal, Patiala, by submitting that the compensation awarded by the Industrial Tribunal is too meagre.

10. On the other hand, learned counsel for respondents No. 2 and 3 has opposed the prayer of the petitioner-workman 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.

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.....”

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

13. 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.

14. Taking note of the fact that the petitioner-workman was appointed as a Foreman and he worked from 20.10.2012 to 22.10.2013 with respondents No. 2 and 3 continuously and his last drawn salary at the time of termination was Rs. 35,000/- 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 respondents No. 2 and 3 has not laid any challenge to the aforesaid Award dated 30.09.2016 (Annexure P-3) and also considering that the petitioner-workman has been litigating with respondent No. 2 and 3 since the year 2015; therefore, I am of the opinion that the compensation awarded to the petitioner-workman is on the lower side.

15. Accordingly, considering the totality of circumstances, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner -workman by the Industrial Tribunal, Patiala is enhanced from Rs. 21,000/- to Rs. 1,00,000/-. Respondents No. 2 and 3 are directed to pay the enhanced amount of compensation to the petitioner-workman within a period of three months from the date of receipt of certified copy of this order. In case, the 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.

16. The instant writ petition is disposed of in the aforestated terms.
17. 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