

CWP-21632-2015

-1-

210

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-21632-2015
Date of Decision: 03.07.2023

Jaswinder Kaur

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ravi Gakhar, Advocate
for the petitioner.

Mr. Naveen Bhardwaj, Advocate with
Ms. Priyanka Choudhary, Advocate
for respondents No.2 to 4.

HARSH BUNGER J. (ORAL)

1. The petitioner (Jaswinder Kaur) 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 10.02.2015 (Annexure P-1) passed by the Industrial Tribunal, Patiala to the extent whereby compensation of Rs.35,000/- has been granted to the petitioner. It is *inter alia* claimed by the petitioner that the said compensation was on the

CWP-21632-2015**-2-**

lower side and the learned Industrial Tribunal, Patiala had erred by not granting reinstatement with full back wages and all other consequential benefits to the petitioner despite holding that the termination of the services of the petitioner was in violation of Section 25-F of the Industrial Disputes Act, 1947.

2. Briefly, the petitioner was appointed with the Punjab State Power Corporation Limited (PSPCL) as part-time sweeper on 10.03.2003 wherein, the petitioner claimed to have worked from 10.03.2003 to 01.02.2009. As per the petitioner, her service record was unblemished, however, on 02.02.2009, the services of the petitioner were terminated by the respondent-Corporation without any notice, chargesheet, enquiry or compensation and at the time of termination of the services, the petitioner is stated to have been drawing salary of Rs.1,500/- per month. Thereafter, the petitioner made a demand notice dated 18.07.2011 (Annexure P-2) under Section 2A of the Industrial Disputes Act, however, since the matter was not resolved, accordingly the government had referred the matter under Section 10 (1) (c) of the Industrial Disputes Act, 1947 to the Industrial Tribunal, Patiala vide reference order dated 10.01.2012 (Annexure P-3) whereupon, the petitioner filed her statement of claim, which was contested by the respondent-Corporation by submitting its written statement dated 20.11.2012 (Annexure P-5).

3. Vide award dated 10.02.2015 (Annexure P-1) passed by the Industrial Tribunal, Patiala, it was held that no chargesheet was issued to the petitioner nor any enquiry was conducted and thus the respondent-Corporation failed to comply with the provisions of Section 25-F

CWP-21632-2015

-3-

of the Industrial Disputes Act, 1947 at the time of termination of the services of the petitioner thus, the termination of the services of the petitioner were held to be in violation of Section 25-F of the Industrial Disputes Act, 1947. It was further held that the petitioner (Jaswinder Kaur) was not the regular employee of the department as no proper procedure was followed while giving her employment and such type of adhoc/temporary appointments were contrary to the provisions of Article 14 and 16 of the Constitution. Accordingly, it was held that the petitioner is not entitled to the relief of reinstatement with back wages. However, considering the fact that the services of the petitioner were terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and also that she worked with the respondent-Corporation from 10.03.2003 to 01.02.2009, accordingly, compensation of Rs.35,000/- was awarded to the petitioner. The Industrial Tribunal, Patiala vide award dated 10.02.2015 granted the following relief to the petitioner:-

“ In the light of my finding regarding above noted issues, this reference is hereby answered in favour of workwoman and against the respondent and respondent is directed to compensate the workwoman with Rs.35,000/- (Rupees thirty five thousand only) within 45 days of the publication of the award, failing which the workwoman 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.”

4. Being dissatisfied with the aforesaid award to the extent whereby, the petitioner was not granted reinstatement with full back wages, the petitioner has filed the instant writ petition.

CWP-21632-2015

-4-

5. Upon issuance of notice of motion in this case, reply has been filed on behalf of respondents No.2 to 4, wherein it has been *inter alia* stated that there is no legal error committed by the Industrial Tribunal, Patiala while granting compensation of Rs.35,000/-. It is stated that the impugned award is well justified and does not call for any interference. It is further stated that the amount of Rs.35,000/- has already been paid to the petitioner.

6. Concededly, the aforesaid award dated 10.02.2015 (Annexure P-1) has not been impugned by the respondent-Management.

7. I have heard learned counsel for the parties and perused the paper book as well as the reply filed on behalf of respondents No.2 to 4.

8. At the time of arguments, learned counsel for the petitioner has confined the claim only *qua* compensation by submitting that the compensation of Rs.35,000/- as awarded by learned Industrial Tribunal, Patiala is on the lower side as the petitioner had rendered services for six years and accordingly, the claim of Rs.5,00,000/- as compensation has been made.

9. On the other hand, learned counsel appearing for respondents No.2 to 4 has submitted that the Industrial Tribunal, Patiala has already granted compensation of Rs.35,000/- which is in consonance with the provisions of the Industrial Disputes Act, 1947 and there is no scope for any further enhancement and accordingly, prayer for dismissal of the writ petition has been made.

10. 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...*"

11. 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.

12. Having heard learned counsel for the respective parties and considering the fact that the petitioner had worked for approximately six years on Rs.1,500/- per month as per the rates fixed by the Deputy Commissioner and also taking into account that the petitioner was not the regular employee of the respondent-Corporation and proper procedure was not followed while giving her employment, accordingly, the petitioner is not entitled to reinstatement with full back wages. However, keeping in view the

CWP-21632-2015

-7-

fact that the petitioner had rendered about six years of service with the respondent-employer; therefore, I am of the considered opinion that the compensation awarded to the petitioner is on the lower side. Accordingly, in my view, the interest of justice would be met if the compensation awarded to the petitioner by the Tribunal below is enhanced from Rs.35,000/- to Rs.2,00,000/-. The respondent-Management is directed to pay the enhanced amount to the petitioner (after adjusting Rs.35,000/- 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.

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

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

03.07.2023
Himani

(HARSH BUNGER)
JUDGE

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