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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21193-2016 (O/M)
Date of decision : 29.08.2023

Jagbir Singh

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ashok Tyagi, Advocate for
Mr. S.S. Kharab, Advocate
for the petitioner.
Mr. Satish Singla, AAG Haryana.

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HARSH BUNGER, J.

1. Petitioner (Jagbir Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the impugned Award dated 10.12.2015 (Annexure P-4), passed by the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal below') to the extent, whereby the petitioner has been denied relief of reinstatement in service and full back wages with all consequential benefits and petitioner-workman has been held entitled to compensation of Rs. 75,000/-, to be paid by respondent-Department.

A further prayer has been made for directing respondent-Department to reinstate the petitioner-Workman and back wages with effect from 01.07.2008 to till date with all consequential benefits.

2. Briefly, the petitioner-Workman raised an industrial dispute, which was referred to the Tribunal below for adjudication. In the claim petition, the petitioner-Workman claimed that he was appointed by respondent-Department (Public Health Department, Panipat) on the post of Mali-cum-Chowkidar on 01.02.1993 and his work and conduct had remained good throughout during the tenure of his service and there was no complaint against him. The petitioner-workman claimed that he worked with Sub Divisional Engineer, Public Health Department No. 2, Panipat from year 1993 to year 2000 and also during the period from year 2001 to 19.01.2004, he worked with Sub Divisional Engineer, Public Health Department No. 1, Panipat. As per the petitioner-workman, on 01.07.2003, he was transferred as a Pump Operator, however, respondent-Department did not provide any log book and attendance register to him (workman) for the purpose of marking attendance in the attendance register and log book for the maintenance of daily record. It was claimed that petitioner-workman worked from 01.02.1993 to 09.01.2004 without any break and he had worked for more than 240 days in every calendar year. As per the petitioner-workman, he filed CWP-14018-2002 before this Court seeking regularization of his services, which was disposed of by this Court directing respondents to take a decision on the representation of petitioner-workman, however, petitioner-workman claimed that his case for regularization in services was not considered by respondent-Department and instead the services of petitioner-workman were terminated on 20.01.2004 without any notice as required by law, whereupon the petitioner-workman filed a demand notice under

Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') before the Labour Officer, Panipat, whereupon a compromise was effected between the Sub Divisional Engineer and petitioner-workman and it was agreed that the petitioner-workman would be taken back on duty from 08.09.2004. It is submitted that the petitioner-workman joined his duty on that date, however, on 04.10.2004, respondent-Department refused to take petitioner-workman on duty. Then the petitioner-workman again served a legal notice dated 08.11.2004 on respondent-Department and also filed a demand notice dated 20.01.2005 before the Labour Officer, Panipat, whereupon, again a compromise was effected and respondent-Department agreed to take petitioner-workman back on duty and since then the petitioner-workman was serving his duty regularly without any break, however, he was not being paid wages by respondent-Department since July, 2008. In these circumstances, the petitioner-workman served a legal notice dated 12.11.2008, whereupon he was again terminated from services on 20.12.2008 without any reason and without any show cause notice, charge sheet, notice period pay and without conducting any enquiry, accordingly, the petitioner-workman claimed that his services have been terminated in violation of the provisions of Section 25-F of 1947 Act. He claimed reinstatement in service with full back wages.

3. The aforesaid claim of the petitioner-workman was contested by respondent-Department on the ground that the petitioner-workman was employed on daily wages on muster roll basis as Mali-cum-Chowkidar with effect from 01.02.1993 and worked upto 04.10.2004. It was stated that the

petitioner-workman had worked in different sub divisions during his employment and it was the duty of Mali-cum-Chowkidar to assist the water Pump Operator and carry out any other manual job assigned to him by the water Pump Operator/Junior Engineer including the maintenance of inlet, channels and filter beds etc. Respondent-Department denied the claim of the petitioner-workman that he had worked continuously for 240 days or more in a year during the period 01.02.1993 to 19.01.2004 without break. Regarding claim of regularization of services, it was stated that the case of the petitioner-workman did not fall under the scheme of regularization, hence, the case of the petitioner-workman was not considered for regularization and was rejected as he was not in service since 5/02 upto 30.09.2003, as is required under the policy of regularization. It was further stated that in pursuance to the settlement arrived at between the petitioner-workman and respondent-Department before the Labour Officer, Panipat, the petitioner-workman was taken back on duty with effect from 08.09.2004 as a Mali-cum-Chowkidar and thereafter, he left the job at his own free will, hence, no notice was necessary or compensation/salary was required to be paid to the petitioner-workman. It was submitted that respondent-Department has not violated the provisions contained in Section 25-F of 1947 Act. Accordingly, prayer for dismissal of the claim petition was made.

4. On the basis of the pleadings of the parties, the issues were framed and parties led their respective evidence.

5. After considering the case of the respective parties as well as evidence/material placed on record, the Tribunal below returned the

following findings :-

“20. It is proved on record that the workman had worked with the respondent for a long time and had completed of about 11 years of service which was admitted by the respondent. Hence, the workman is very much entitled to the relief against the respondent. Keeping in view the entire circumstances, the court is of the considered opinion that ends of justice would meet if instead of passing an award of reinstatement in service to the workman with full back wages with continuity of service, the workman is entitled to be paid a lump sum compensation of Rs. 75000/- (Rs. Seventy five thousand only) to be paid to the workman by the management. However, the workman shall be paid the said amount from the respondent within three months from the date of publication of the Award, failing which the management will be liable to pay simple interest @ 6% per annum. Hence, issue No. 1 is decided accordingly.

RELIEF

21. In view of the findings recorded on the above issues, I hold that the workman is entitled for compensation of Rs. 75000/- (Rs. Seventy five thousand only) to be paid to the workman by the management within three months from the date of publication of the Award, failing which, the management will be liable to pay interest @ 6% per annum. Hence, this reference is accordingly answered in favour of the workman.”

Considering the aforementioned, the Tribunal below has

answered the reference in favour of the petitioner-workman whereby instead of passing an award of reinstatement in service with full back wages and continuity of service, the petitioner-workman was held entitled to be paid a lump sum compensation of Rs. 75,000/-.

6. In the aforementioned circumstances, the petitioner-workman approached this Court by filing the instant writ petition.

7. Learned counsel for the petitioner-workman submits that the Tribunal below has erred in law by not granting the reinstatement with continuity of service and back wages to the petitioner-workman despite answering the reference in his favour. It is submitted that the Tribunal below has acted arbitrarily in denying the relief to the petitioner-workman and granted a meagre compensation of Rs. 75,000/- only. It is submitted that concededly, the aforesaid Award dated 10.12.2015 has not been impugned by respondent- Department, therefore, the petitioner-workman be granted relief of reinstatement and all consequential benefits.

8. On the other hand, learned State counsel has opposed the prayer of the petitioner-workman on the ground that the appropriate relief has already been granted to the petitioner-workman as the relief of reinstatement with full back wages and continuity of service is not automatic. It is submitted that the impugned award is justified and adequate compensation has already been granted, therefore, the impugned Award does not call for any interference. Accordingly, prayer for dismissal of the instant writ petition has been made.

9. I have heard learned counsels for the parties and have also

perused the paper book with their able assistance.

10. Concededly, the services of the petitioner-Workman have been held to be terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). The respondent-Management has not laid any challenge to the impugned award herein whereby compensation was awarded to the petitioner-Workman.

11. The latest legal trend is award of compensation in place of reinstatement. In the case of BSNL V. Man Singh; (2012) 1 SCC 558, the Apex Court held that when the termination is set aside because of violation of Section 25-F of 1947 Act, it is not necessary that the relief of reinstatement be given as a matter of right.

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 decisions of this Court in recent years has been uniform on the above question.

3. *In the case of Jagbir Singh v. Haryana State Agriculture Marketing 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 Corporation Ltd. v. Uday Narain Pandey, Uttranchal Forest Development Corporation vs. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sita Ram v. Motil Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramasahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp. 330 and 335 paras 7 and 14)*

"7. It is true that the earlier view of this Court articulated in many decisions 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 Department 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 the Hon'ble Apex Court in BSNL Versus Bhurumal, 2014 (3) SCT 49; wherein, the Apex Court has clearly held that when there is violation of Section 25-F of 1947 Act, the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the ends 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.”

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. The perusal of the above judgments makes it clear that new established trend is grant of compensation in lieu of reinstatement.

15. In the present case, the services of the petitioner-workman were terminated about 15 years ago, which have been held by the Tribunal below

to be in violation of the provisions of Section 25-F of 1947 Act. Concededly, the respondent-Management has not laid any challenge to the impugned award herein whereby compensation was awarded to the petitioner-workman. Therefore, in view of the legal position indicated above, I consider that the order of reinstatement may not be passed in this case. However, the compensation awarded by the Tribunal below is to the lower side.

16. Accordingly, 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. 75,000/- to Rs. 2,50,000/-. Respondent-Department is directed to pay the enhanced amount to the petitioner-workman (after adjusting lump sum compensation of Rs. 75,000/-, already awarded by the Tribunal below) 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.

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

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

(HARSH BUNGER)
JUDGE

29.08.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No