

224

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-7923-CWP-2022 in/and
CWP-23371-2014 (O/M)
Date of decision : 12.12.2023

Karampal

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Patiala and others
..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Arihant Jain and Mr. Rishabh Jain, Advocate (s)
for the petitioner.

Mr. Vipin Pal Yadav, Additional A.G. Punjab
for respondents No. 2 and 3.

None for respondent No. 4.

:-

:-

HARSH BUNGER, J.

CM-7923-CWP-2022

This is an application filed under Section 151 CPC for listing the case as the same has been adjourned sine die, vide order dated 12.03.2018, passed by a coordinate Bench of this Court.

For the reasons mentioned in the application, same is allowed and the main case is taken on board today itself for hearing.

Application is accordingly disposed of.

CWP-23371-2014

1. Petitioner (Karampal) 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 quashing the Award dated 06.11.2013 (Annexure P-3), passed by the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby the petitioner was granted a compensation of Rs. 35,000/-, instead of reinstatement.

Further prayer has been made for directing respondents to reinstate the petitioner with full back wages and continuity of service.

2. Briefly, petitioner-workman (Karampal) raised an industrial dispute regarding termination of his services on the plea that he had joined under respondents no. 2 to 4 herein (hereinafter referred as 'respondent-Management') on dated 28.04.1999 as a Clerk and his services were terminated on 19.06.2003 without any notice, inquiry or compensation and at the time of his termination, he was taking salary of Rs. 3,000/- per month. Petitioner-workman claimed that he had worked for 240 days in one year and his junior is working. Accordingly, petitioner-workman prayed for reinstatement and other consequential benefits.

3. On the other hand, the aforesaid claim of petitioner-workman was contested by respondent-Management on the plea that the petitioner-workman was appointed vide letter dated 22.04.1999 on contract basis and he was relieved by Executive Officer, Municipal Council, Dera Bassi, vide letter dated 21.05.2003 and the said letter was duly received by petitioner-workman. It was stated that in case of extension of contract period of workman, it was a financial burden on Municipal council. Accordingly, prayer for dismissal of claim of petitioner-workman was made.

4. On the basis of the pleadings of the parties, the following issues were framed by the learned Tribunal below:-

“1. Whether termination of services of the workman is proper and justified ? OPM

2. Whether the reference is not maintainable in the light of preliminary objection taken in the written statement ? OPM

3. Whether the workman is entitled to get relief from the respondent ? OPW

4. Relief.”

5. Evidence was led by the respective parties in support of their claims.

6. Considering the material/evidence available on record, the Learned Tribunal below, vide its Award dated 06.11.2013 (Annexure P-3), returned the following findings : -

(a) Petitioner-workman was employed by Municipal Council, Dera Bassi on 22.04.1999.

(b) Petitioner-workman was not a permanent employee or employed against regular post.

(c) Services of Petitioner-workman were terminated vide letter dated 24.05.2003.

(d) MW1 Rajinder Singh in his cross-examination admitted as correct that workman continuously worked with Committee for four years and that no specified period was mentioned in the appointment letter Ex. W4, which was issued to workman.

- (e) Petitioner-workman worked from 28.04.1999 to 19.06.2003 and his services were terminated without any notice, chargesheet or payment of compensation
- (f) Termination of services of Petitioner-workman was in violation of provisions of section 25-F of 1947 Act.

7. The Learned Tribunal below granted the following relief to the Petitioner-workman:-

“21. Karampal 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 Karnataka 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 2003 and period of 10 years has already lapsed.

22. In the light of the above discussion, it is held that workman Karampal 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 four years and that this reference remained pending for about 8 years, interest of justice shall be served if compensation worth Rs. 35000/- (Rupees thirty five thousand only) is directed to be paid to the workman by the Respondent. 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 maintainable. Accordingly, issue No. 1 and 2 are answered against management and in favour of the workman and issue No. 3 is answered in favour of the workman and against the respondents.

RELIEF

23. In the light of my findings regarding above issues, this reference is answered in favour of workman to the effect that Respondent Department is directed to compensate the workman with Rs. 35000/- (Rupees thirty five thousand only) within 60 days of publication of the award, failing which the workman will be entitled to the above said amount along with interest @ 6% per annum from the date of passing of the award till its actual realization. Award is answered accordingly in favour of the workman.”

8. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

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

10. Concededly, the aforesaid Award dated 06.11.2013 (Annexure P-3) has not been impugned by respondent-Management.

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 State counsel appearing for respondents No. 2 and 3 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 was appointed as a Clerk by respondent-Management on 28.04.1999 and he was not a regular employee; he was getting monthly salary of Rs. 3,000/-; the services of the petitioner had been terminated in violation of provisions of Section 25-F of 1947 Act and the termination took place about 20 years ago, coupled with the fact that respondent-Management has not laid any challenge to the aforesaid Award dated 06.11.2013 (Annexure P-3) and also considering that the petitioner has been litigating with respondent-Management since 2005; therefore, I am of the 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. 35,000/- to Rs. 2,00,000/-. Respondent-Management is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 35,000/-, 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 aforestated terms.
19. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

12.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No