

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-17828-2018 (O&M)
Date of Decision: 02.11.2023

GHAMANDI LAL

...Petitioner

Versus

CIVIL SURGEON, GOVT. HOSPITAL, REWARI
DISTT. REWARI AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vineet Yadav, Advocate
for the petitioner.

Mr. Satish Singla, D.A.G., Haryana.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Ghamandi Lal) 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 impugned Award dated 21.10.2015 (Annexure P-1) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon; whereby, the relief of re-instatement in service with full back wages was declined to him and an amount of Rs.50,000/- was awarded to him as compensation.

2. Briefly, the petitioner claims that he was appointed as a Sweeper by respondent No.1 (Civil Surgeon, Government Hospital, Rewari, District Rewari) on 08.01.2010 but no appointment letter was issued to him. However, the last drawn salary of the petitioner is stated to be Rs.5,000/- p.m. The petitioner states that his services were illegally terminated on 15.03.2013 without complying with the provisions of

Industrial Disputes Act (for short 'the Act'). The petitioner raised an industrial dispute and thereafter, the claim petition was filed, which was contested by respondent Nos.1 and 2 by stating that the petitioner herein was appointed on 08.01.2010 as Part Time Sweeper on the fixed rate of Rs.1,000/- per month and he was paid fixed honorarium of Rs.4,310/- p.m. after 01.04.2011 to 15.03.2013 i.e. till the date of his termination from service. It is the pleaded case of respondents No.1 and 2 that the petitioner-workman was served with notice for his unsatisfactory work. It is further submitted that the District Health and Family Welfare Society relieved the petitioner-workman from service as the cleaning and sanitation work of Civil Hospital, Rewari, Civil Surgeon Office, Rewari and Trauma Centre, Rewari was given to BR & Company, according to outsourcing policy of Haryana Government.

3. The learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon, while passing the impugned Award dated 21.10.2015, has held as follows :-

“12. Undisputedly, the services of the workman were terminated by the respondents after 15.03.2013. Admittedly, the respondents are not shown to have conducted any departmental enquiry against the workman before terminating his services. The respondents have also not complied with the provisions of Section 25-F of the Industrial Disputes Act before terminating the services of the workman. Accordingly, the above-said action of the respondents is clearly against the provisions of labour law and is liable to be set-aside.

13. Now the question to be decided by the Court is as to what relief is to be given to the workman in this case. Keeping in view the peculiar facts and circumstances of this case, it would not be appropriate to reinstate the

workman in service. Law is well settled on the point that where it is not possible to reinstate the workman in service, the workman can be duly compensated by awarding him appropriate monetary compensation. The workman had remained in the employment of the respondents for a sufficiently long time. There is nothing on record to prove that the workman had remained gainfully employed during the above said period. Keeping in view the given facts and circumstances, the workman is awarded a lump-sum compensation of Rs.50,000/- (Rupees Fifty thousand only) in this case. Respondents shall pay the requisite compensation to the workman within three months.

14. Hence, the present reference is ordered to be decided in terms of the observations made above.

15. Case file be consigned to the Record Room.”

4. Against the afore-said award, the petitioner has approached this Court by way of filing the instant writ petition.

5. I have heard learned counsel for the respective parties and have also gone through the paper book as well as impugned award dated 21.10.2015 (Annexure P-1) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon.

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

7. On the other hand, learned counsel for respondent Nos.1 and 2 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 writ petition has been made.

8. Hon'ble the Supreme Court in ***B.S.N.L. Versus Bhurumal*** 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...”*

9. 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.

10. Taking note of the aforesaid submission of learned counsel for the petitioner and the fact that the petitioner was appointed as a Sweeper and his services were terminated without conducting any enquiry and without complying with the provisions of Section 25F of the 1947 Act and also considering that the sanitation and cleaning work of Civil Hospital, Rewari,

Civil Surgeon Office, Rewari and Trauma Centre, Rewari was given to BR & Company according to outsourcing policy of Haryana Government; coupled with the fact that respondent Nos.1 and 2 have not laid any challenge to the award passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon especially the finding that the petitioner had worked from 08.01.2010 to 15.03.2013 and also that the petitioner had been litigating with respondent Nos.1 and 2 since 2014; I am of the considered opinion that the compensation awarded to the petitioner is on the lower side. Accordingly, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner by the Tribunal is enhanced from Rs.50,000/- to Rs.2,00,000/-. Respondents-Management is directed to pay the enhanced amount to the petitioner (after adjusting Rs.50,000/- awarded by the Tribunal below, if already paid) within a period of three months from the date of receipt/presentation 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 at the rate of 6% per annum till such time payment is not made.

- 11. The instant writ petition is disposed of in the afore-stated terms.
- 12. All pending application/s, if any, shall stand closed.

November 02, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No