

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

CWP-25787 of 2016 (O&M)
Date of decision : 17.10.2023

BABU LAL

...Petitioner

Versus

HARYANA TOURISM CORPORATION LIMITED
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Abha Rathore, Advocate
for the petitioner.

Mr. Deepak Balyan, Advocate
and Mr. Vicky Chauhan, Advocate
for the respondents.

HARSH BUNGER, J.

1. Petitioner (Babu Lal) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari/mandamus*, for modifying the relief as granted to him by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon, in Award dated 09.08.2016 (Annexure P-2); whereby, he was granted *lump sum* compensation of Rs.5,00,000/-. The petitioner-workman was further held entitled to all retirement benefits, if any, as admissible to the employees of his category.

2. Briefly, the petitioner-Babu Lal raised an industrial dispute wherein, he claimed that he was appointed by respondent No.1/department-Haryana Tourism Corporation Limited, in the month of April, 1976 as a *Waiter* on daily wages and due to his good work, he was regularized by the Department w.e.f. 15.07.1980. According to the petitioner, his service record

was 'good' and hence, his pay was increased and there was no complaint qua him. It is the case of the petitioner that on 26.04.1998, he had fallen ill and had sent his leave application from 27.04.1998 to 31.04.1998 to the department. However, since there was no improvement in his health; accordingly, he again sent his leave application from 01.05.1998 to 15.05.1998 to the respondent-Department/Management. During this period, the petitioner is stated to have taken treatment from 'Tanwar Nursing Home', Hasanpur Road, Hodel and due to his illness, he was unable to attend his duties on 16.05.1998 as he remained under treatment upto 31.07.1998. It is also the case of the petitioner that due to reaction of some medicine, he lost his eye-sight and he also remained under treatment of Bhardwaj Nursing Home, Eye Hospital, near Bus Stand w.e.f. 01.08.1998 to 16.03.1999 and he received his 'Medical Fitness Certificate' on 17.03.1999. Accordingly, he submitted his joining report along with 'Medical Fitness Certificate' on 17.03.1999 to the Divisional Manager, Sohna. It appears that the petitioner was issued a charge-sheet on 04.03.1999, to which, he filed his reply. Thereafter, the departmental enquiry was conducted; wherein, neither any witness was examined nor any document was produced to prove the allegation against the petitioner-workman. Ultimately, the services of the petitioner were terminated by the respondent-Department/Management on 10.01.2002. Petitioner claimed that the enquiry was conducted under the pressure of the Management and a wrong report was submitted against him and his services were illegally terminated; accordingly, he sought reinstatement in service along with full back wages.

3. The aforesaid claim of the petitioner was contested by the respondent-Department/Management on the plea that the petitioner-

workman was a habitual absentee and he was charge-sheeted and awarded punishment after following the due procedure. The factum of illness of the petitioner-workman was denied and it was stated that he never submitted any detail of his ailment and also did not produce any documentary proof with regard to his admission in any hospital for a long period of ten months of his absence. The plea of the petitioner with regard to the treatment of his eye was also denied by the respondent-Department/Management. It was submitted that the petitioner-workman had failed to produce any medical record for proving the cause of his absence. It was also submitted that the reply submitted by the petitioner-workman to the charge-sheet was not found satisfactory and the departmental enquiry was conducted fairly and impartially, after following the due procedure and it was stated that the petitioner-workman was rightly removed from service w.e.f. 10.01.2002. 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 the parties led their respective evidence.

5. After considering the case of the respective parties and also the material/evidence placed on the record, the learned Tribunal passed an Award dated 09.08.2016 (Annexure P-2) by holding as under :-

“14. At the outset, it is important to note that the present workman was dismissed from service by the respondent vide dismissal order dated 10.01.2002 on the charges of gross misconduct committed by him. No doubt, the respondent had conducted departmental enquiries against the workman before passing the above said dismissal order against the workman. However, while deciding issue No.1-A, the above-said enquiries against the workman were found to be vitiated by the Court on the ground that these were not fair and proper.

15. Now the question to be decided by this Court/Tribunal is as to whether the respondent was justified in ordering the dismissal of the workman without holding proper and fair regular departmental enquiries. Admittedly, Rule No.21 of the Certified Standing Orders governing the respondent-company clearly stipulates that no order of dismissal shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct. Accordingly, it was mandatory on the part of the respondent to hold proper and fair regular departmental enquiries against the workman before any order of dismissal from service could be passed against him. Needless to state, the term “enquiry” referred to in Rule 21 of Standing Orders would presuppose the conduct of a proper and fair enquiry by the respondent. It is equally apparent that a defective and unfair enquiry conducted against the workman would not comply with the requirement of a mandatory enquiry envisaged under Rule 21 of Standing Orders. On the other hand, it is a settled law that a defective and unfair enquiry would, in fact, amount to no enquiry in the eyes of law. As already stated above, the Court has already given a finding under issue no.1-A that the enquiries conducted by the respondent against the workman were not fair and proper. Thus, the respondent cannot be said to have conducted fair and proper enquiries as envisaged under Rule 21 of the Standing Orders governing the respondent. In these circumstances, the respondent would be clearly deemed to have violated the Rule 21 of the Standing Orders governing the respondent while dismissing the workman from service.

16. For the reasons stated above, it is very clear that the respondent has passed the order of dismissal from service against the workman by conducting defective and unfair departmental enquiries against him. As already stated above, a defective and unfair enquiry would, in fact,

amount to no enquiry in the eyes of law. The respondent has acted in a grossly illegal manner by violating its own Rule No.21 of Certified Standing Orders in this behalf.

17. Now the question to be decided by the Court/Tribunal is as to what relief the worker is entitled to in the given facts and circumstances of this case. Admittedly, the present worker has already attained the age of superannuation from service during the pendency of legal proceedings. In this view of the matter, it would not be possible to order the reinstatement of the workman in service.

18. 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. Admittedly, the workman had remained in the regular employment of the respondent company for a long period of more than twenty one years holding a responsible position. There is nothing on record to prove that the workman had remained gainfully employed during the above said period. Keeping in view the past record of service, the length of service, the last drawn wages of the workman, the workman is awarded a lump-sum compensation of Rs.5,00,000/- (Rupees Five lacs only) in this case. The workman would also be entitled to all retirement benefits, if any, as admissible to the employees of his category.

6. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

7. I have heard learned counsel for the respective parties and have also gone through the paper book as well as impugned award dated 09.08.2016 (Annexure P-2) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon.

8. At the time of issuance of notice of motion, the following order dated 31.05.2022 was passed by the Co-ordinate Bench of this Court :-

*“Undisputedly, the petitioner-workman had attained the age of superannuation even before passing of the award, therefore, reinstatement is ruled out in the matter. However, the counsel for the petitioner has submitted that the service of the petitioner had been for more than 25 years. In view of the judgment rendered by Hon’ble the Supreme Court in the case of **BSNL Vs. Bhurumal, 2014(3) SCT 49** and further followed in the case of **Ram ManoharLohia Joint Hospital and others Vs. Munna Prasad Saini and another, Civil Appeal No.5810 of 2021, decided on 20.09.2021**, the amount of compensation deserves to be enhanced to a reasonable level.*

Adjourned to 19.01.2023.

The counsels shall come with their offer and counter offer amount of compensation, which can be paid in the matter.

The petitioner may also come present before this Court on the next date of hearing, if he so desires.”

While referring to the above-referred order issuing notice of motion, learned counsel for the petitioner contends that the compensation awarded to the petitioner is too meagre, considering the fact that he has rendered service for more than 25 years and it was held by the Tribunal below that the enquiry against the petitioner-workman was found to be vitiated on the ground that the same was not fair and proper. It was also submitted that the afore-said Award has not been challenged by the respondent-Department/Management. Accordingly, learned counsel for the petitioner prayed for enhancement of compensation.

9. On the other hand, learned counsel for the respondents 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.

10. 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...”

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. Taking note of the aforesaid submission of learned counsel for the petitioner and the fact that respondent No.1-department/Management has 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-workman had remained in the regular employment of the respondent for a long period of more than twenty one years and also that the petitioner-workman has attained the age of superannuation and the petitioner had been litigating with respondent No.1 since 2002; I consider that the compensation awarded to the petitioner is on the lower side. In my considered view, the interest of justice would be met if the compensation awarded to the petitioner by the learned Tribunal is enhanced from Rs.5,00,000/- to Rs.8,00,000/-. Accordingly, the Award dated 09.08.2016 (Annexure P-2) is modified and the respondent-Management is directed to pay the *lump sum* compensation of Rs.8,00,000/- to the petitioner (after adjusting Rs.5,00,000/- 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.

13. The instant writ petition is disposed of in the afore-stated terms.

14. All pending application/s, if any, shall stand closed.

October 17th, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No