

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

CWP-26952-2016 (O&M)
Date of Decision: 31.08.2023

RAJENDER GOYAL

...Petitioner

Versus

M/S VIPIN ENGINEERING WORKS & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Adarsh Jain, Advocate
for the petitioner.

Mr. Jagjot Singh, Advocate
for Mr. Kunal Dawar, Advocate
for respondent No.1.

HARSH BUNGER, J. (ORAL)

Petitioner (Rajender Goyal) has filed the instant writ petition under Article 226 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing the impugned Award dated 01.08.2016 (Annexure P-5) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle-1, Faridabad; whereby, the relief of re-instatement in service with full back wages was declined to him and an amount of Rs.35,000/- was awarded to him as compensation.

A further prayer has been made for issuance of a writ in the nature of *mandamus* directing the respondents to re-instate the petitioner in service with full back wages.

2. Briefly, the petitioner claims that he was appointed as a Field Worker with M/s Vipin Engineering Works (respondent No.1) on 11.02.2005 but no appointment letter was issued to him. However, the last

drawn salary of the petitioner is stated to be Rs.8,500/- p.m. The petitioner states that his services were illegally terminated on 19.04.2013 without complying with the provisions of Industrial Disputes Act (for short 'the Act'). The petitioner raised an industrial dispute by serving a demand notice upon respondent No.1 herein and thereafter, the claim petition was filed, which was contested by respondent No.1 by stating that the petitioner herein was appointed on 01.01.2010 as Field Worker and he worked upto 08.04.2012. However, the petitioner did not report for duty w.e.f. 09.04.2012. As per respondent No.1, the last drawn salary of the petitioner was Rs.5,100/- p.m. and it was denied that the petitioner worked with respondent No.1 in the year-2013. It is stated that in May-2012, the petitioner collected his eight days' wages and at that time, he expressed his inability to work with the Management as he was not well. Accordingly, respondent No.1 claimed that the petitioner had left the services of respondent No.1-Management, on his own and hence, his name was removed from the register in May-2012.

3. The learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle-1, Faridabad, vide Award dated 01.08.2016, while discussing the issue No.1, *inter alia*, recorded his findings as under :-

(i) *From the record, it is clear that the petitioner herein had worked with respondent No.1 at least from 30.12.2008 to April, 2013.*

(ii) *The Management witness had admitted that he had not paid salary of March-2013 and 18 days of April-2013 to the petitioner herein as he has allegedly not worked but his working is established.*

(iii) *No reliable documentary evidence has been produced that the petitioner's salary was Rs.5100/- p.m.*

(iv) *Petitioner's plea of Rs.8500/- has not been shattered.*

The learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Faridabad, while passing the impugned Award dated 01.08.2016, has held as follows :-

"14. May be the claimant left the job of his own but the respondent took the plea of abandonment which he is required to prove. The MW-1 Shyam Sunder Mittal has admitted that he never sent any call letter to the claimant. If the claimant had abandoned the job it was respondent's duty to send a call letter and make proper inquiry before removing him from service. Payment of legal dues should have also be made which is also not done. In view of conduct of the parties in preparation of records and peculiar facts and circumstances of the case, ends of justice demands that instead of reinstatement the claimant should be held entitled to lumpsum compensation for his termination. The claimant is held entitled to compensation of Rs.35,000/- including withheld wages for March, April, 2013. This issue is partly decided in favour of the claimant in the manner indicated above.

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Relief :-

In view of my finding on above issues the reference is answered partly in favour of the claimant holding him entitled to lump sum compensation Rs.35,000/-. Award is passed accordingly. File be consigned to record room after due compliance."

4. Against the afore-said award, the petitioner has approached this Court by way of filing the instant writ petition.
5. Concededly, the afore-said award dated 01.08.2016 (Annexure P-5) has not been impugned by the respondent-Management.

6. I have heard learned counsel for the respective parties and have also gone through the paper book as well as impugned award dated 01.08.2016 (Annexure P-5) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Faridabad.

7. 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.

8. On the other hand, learned counsel for respondent No.1 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.

9. 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...*”

10. 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.

11. Taking note of the aforesaid submission of learned counsel for the petitioner and the fact that the petitioner was appointed as a Field Worker and he has not shown any appointment letter and neither respondent No.1-Management has substantiated its plea that the petitioner has abandoned his service; coupled with the fact that respondent No.1 has not laid any challenge to the award passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Faridabad especially the finding that the petitioner had worked from 30.12.2008 upto April, 2013 and also that the petitioner had been litigating with respondent No.1 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.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 three 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 at the rate of 6% per annum till such time payment is not made.

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

August 31st, 2023
Himani/gurpreet

(HARSH BUNGER)
JUDGE

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