

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

CWP-5720-2014 (O&M)
Date of Decision: 14.12.2023

MUNICIPAL COMMITTEE, LOHARU, NEAR OLD
POLICE STATION, DISTRICT BHIWANI, THROUGH
ITS SECRETARY

...Petitioner

Versus

INDUSTRIAL TRIBUNAL, LABOUR COURT, ROHTAK
THROUGH ITS PRESIDING OFFICER AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Bikram Chaudhary, Advocate
for the petitioner.

Mr. S.K. Verma, Advocate
for respondent No.2.

Ms. Ruby Kaur, Advocate
for Mr. Rajesh Lamba, Advocate
for respondent No.6.

HARSH BUNGER, J.

1. Petitioner (Municipal Committee, Loharu) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for quashing of the impugned Award dated 17.07.2013 (Annexure P-4) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak (here-in-after referred to as 'the Tribunal'); whereby, the reference of industrial dispute raised by respondent No.2 herein (Suresh Kumar) was decided in his favour and he was ordered to be reinstated with 50% back wages from the date of the demand notice.

2. Briefly, respondent No.2-Suresh Kumar raised an industrial dispute by way of demand notice dated 16.03.1999 and subsequently, he submitted his claim statement before the learned Tribunal; wherein, it was

stated that he was engaged as *Octroi Moharir* by the Municipal Committee, Loharu w.e.f. 03.09.1992 and his work and conduct was satisfactory throughout his tenure. Respondent No.2 claimed that his services were terminated w.e.f. 19.04.1994 and his service record was interpolated so as to show that he has not worked for 240 days. He further claimed that juniors to him were retained in service and even fresh hands were appointed after termination of his services. Respondent No.2 claimed that his services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Accordingly, prayer was made for reinstatement in service with full back wages and other benefits.

3. The afore-said claim of respondent No.2 was contested by the present petitioner-Municipal Committee (here-in-after referred to as 'the Management'), on the plea that respondent No.2 had been appointed in an illegal manner by the then President, Municipal Committee, Loharu, as in terms of the Haryana Municipal Committee Service Act, 1982, the right to appoint a Peon is vested only on the Deputy Commissioner. It was the stand of the petitioner-Management before the learned Tribunal below that the claim petition was time barred. It was also stated that the Government of Haryana, in the year 2000, had dissolved the Municipal Committee, Loharu and was subsequently merged with the Municipal Committee, Charkhi Dadri. A categorical stand was taken that respondent No.2 has not worked for 240 days in the Municipal Committee, Loharu and also that in the year 1999, the Government of Haryana had abolished the Octroi and in the year 2000, the Municipal Committee was abolished. However, when the

Municipality stopped collecting the Octroi and upon abolition of the Municipal Committee, Loharu, respondent No.2 left the job.

With the afore-said pleas, the prayer was made for dismissal of the claim statement.

4. From the pleadings of the parties, the following issues were framed :-

- “1) Whether termination of services of workman is justified and if not, to what relief, he is entitled to ?OPM*
- 2) Relief.”*

5. After considering the material/evidence available on the record, the learned Tribunal answered the reference in favour of respondent No.2-workman, by holding as under :-

“14. I have given my considered thought to the averments raised by the petitioner/workman. There can be no better proof than admission. It is crystal clear from the evidence that the petitioner/workman was appointed as Chungi Mohrar and he worked continuously from 03.09.1992 to 19.04.1994 and his services were illegally terminated on 20.04.1994 in violation of provisions of Section 25-F of the Industrial Disputes Act. It is also pertinent to mention here that the petitioner/workman summoned the witness WW-2 Surender Kumar, Clerk O/o Municipal Committee, Loharu to produce not only the service record of the petitioner/workman but summoned the record of other employees who joined after the termination of the petitioner/workman or of the person junior to him who were retained by the respondent/management. But the only explanation rendered by WW2 Surender Kumar, Clerk O/o Municipal Committee, Loharu for non production of the aforesaid record is that the summoned record was not made available to him, hence cannot be produced even in future.

It is, therefore, in view of the admitted position and while drawing adverse inference against the respondent/management for non production of the summoned record, it is held that the petitioner/workman had rendered continuous service of 240 days in the preceding 12 months of his termination on 20.4.1994 as neither any notice was served upon him nor any compensation was paid to him.

15. Thus as a consequence to the aforesaid discussion, this Court is of the considered opinion that as the services of the workman have been terminated in violation of Section 25-F of the Act, so he is entitled for reinstatement along with continuity of service and 50% back wages from the date of demand notice i.e. 16.03.1999 and findings under the aforesaid issue are accordingly returned in favour of the petitioner/workman and against the respondent/management.

Relief

16. In view of my finding on the foregoing issues, it is held that the services of the workman have been terminated illegally, therefore, he is entitled to be reinstated on his previous post with continuity of service, 50% back wages from the date of demand notice i.e. 16.03.1999. In way this reference is decided in favour of the workman and against the management. Award is passed accordingly. File be consigned to record room.”

6. In the afore-mentioned circumstances, the Municipal Committee had filed the instant writ petition, challenging the afore-stated Award dated 17.07.2013 (Annexure P-4) passed by the learned Tribunal below.

7. It is required to be noticed that vide an order dated 26.03.2014 passed by a Co-ordinate Bench, the operation of the Award dated 17.07.2013 (Annexure P-4) was ordered to be stayed.

8. Learned counsel for the petitioner has argued that the impugned Award dated 17.07.2013 (Annexure P-4) is erroneous and perverse as the same has been rendered contrary to the settled law on the subject. It is submitted that respondent No.2 was not appointed after following the due procedure and process and therefore, the learned Tribunal below has erred in directing reinstatement of respondent No.2. It is further submitted that respondent No.2-workman, in his cross-examination, had clearly admitted that no appointment letter was issued to him and also that, he was not appointed through the Employment Exchange. It is stated that respondent No.2 had further admitted in his cross-examination that he was not appointed by the Deputy Commissioner and neither, he had submitted his qualification certificate at the time of his appointment. Accordingly, it is contended by learned counsel for the petitioner that the engagement of respondent No.2 was a backdoor entry and therefore, he was not entitled to reinstatement. Learned counsel for the petitioner further submits that there was a delay for almost nine years in filing the claim petition. It is also contended that in the year 1999, the Haryana Government had abolished the collection of Octroi and in the year 2000, the Municipal Committees were dissolved and accordingly, there was no question of granting the relief of reinstatement and back wages. It is also contended that even in cases, where the termination is held to be bad for violation of the provisions of Section 25-F of the 1947 Act, even then, the grant of relief of reinstatement and back wages is not automatic.

With the aforesaid submissions, it is prayed that the writ petition be allowed by quashing the impugned Award dated 17.07.2013 (Annexure P-4) passed by the learned Tribunal below.

9. On the other hand, learned counsel for respondent No.2 has submitted that the Tribunal below has passed a well reasoned and justified order, which does not call for any interference by this Court. It is submitted that a finding of fact has been recorded by the Tribunal that respondent No.2 had worked for more than 240 days and it has been further held that the services of respondent No.2 have been terminated, in violation of Section 25-F of the 1947 Act. Therefore, respondent No.2 was entitled to relief of reinstatement and back wages, which has been rightly granted to him.

With the afore-said pleas, the prayer for dismissal of the writ petition has been made.

10. I have heard learned counsel for the parties and have gone through the paper-book as well as impugned Award dated 17.07.2013 (Annexure P-4) passed by learned Tribunal below.

11. In the instant case, the award is passed on the basis that respondent No.2-workman had worked for 240 days in preceding twelve months' period prior to his termination and therefore, it was a clear case of violation of Section 25F of the Industrial Disputes Act, 1947. In my considered view, no fault can be found with the aforesaid findings returned by the Tribunal below. The termination is, thus, rightly held to be illegal.

12. The only question that survives for consideration is as to whether the relief of reinstatement with full back wages was rightly granted by the Tribunal below.

13. Learned counsel for the petitioner has submitted that even if the termination of a workman has been held to be bad for violation of Section 25-F of 1947 Act, even then the relief of reinstatement and consequential benefits is not automatic. On the other hand, learned counsel for respondent

No.2-workman has submitted that once termination of a workman has been held to be in violation of Section 25F of 1947 Act, then the relief of reinstatement and consequential benefits has to be granted.

14. In ***BSNL v. Man Singh, 2012(1) S.C.T. 641***, Hon'ble Supreme Court held that when the termination is set aside because of violation of Section 25F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right.

15. Further in ***Incharge Officer and Anr. v. Shankar Shetty, 2010(4) S.C.T. 261***, it was held by Hon'ble Supreme Court that 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), Hon'ble the Supreme Court has observed as under :

"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 25F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

In Jagbir Singh v. Haryana State Agriculture Mktg. Board, 2009(3) S.C.T. 790 : (2009) 15 SC 327, 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 Corpn. Ltd. v. Uday Narain Pandey, 2006(1) S.C.T. 77: (2006) 1 SCC 479, Uttaranchal Forest Development Corpn. v. M.C. Joshi, 2007(2) S.C.T. 562 : (2007) 9 SCC 353, State of M.P. v. Lalit Kumar Verma, 2007(1) S.C.T. 620 : (2007) 1 SCC 575, M.P. Admn v. Tribhuban, 2007(2)

S.C.T. 738 : (2007) 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute, 2008(2) S.C.T. 660 : (2008) 5 SCC 75, Jaipur Development Authority v. Ramsahai, 2006(4) S.C.T. 772 : (2006) 11 SCC 684, GDA v. Ashok Kumar, (2008) 4 SCC 261, and Mahboob Deepak v. Nagar Panchyat, Gajraulal and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14)

"It is true that the earlier view of this Court articulated in many decision 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.

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."

Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal, (2010(2) S.C.T. 609 : 2008) 1 SCC 575, wherein this Court stated: (SCC p.777, para 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."

16. In **Telecom District Manager v. Keshab Deb, 2008(4) S.C.T. 32**, the Hon'ble Supreme Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months' pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25F of the Industrial Disputes Act.

17. It would also be apposite to refer to the settled position in law that no appointment can be made in deviation of or departure from the procedures laid down under law. In **State of Karnataka v. Uma Devi, (2006) 4 SCC 1**, Hon'ble Supreme Court has observed as under:-

"38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate

expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post...”

18. It is equally well-settled that those who come by backdoor should go through that door. In this regard, reference can be made to ***State of U.P. and Others v. U.P. State Law Officers Association & Others, 1994(1) SCT 863 (SC)***, wherein Hon'ble Supreme Court observed as under:-

“The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure, can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not a necessarily vested with public sanctity. There is, therefore, no public interest

involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.”

19. It is also not in dispute that even when reinstatement was ordered, it does not automatically follow that full back wages should be directed to be paid to the workman. In the case of ***Coal India Ltd. v. Ananta Saha, (2011) 5 SCC 142***, Hon'ble Apex Court had observed as under:-

“47. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement...”

20. In ***B.S.N.L. v. Bhurumal 2014(3) S.C.T. 49***, Hon'ble Supreme Court 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... ”

21. When the case in hand is examined in the light of the aforesaid legal position and principles, it is observed that respondent No.2—workman was working as a “**Chungi Mohrar**” on daily wage basis with Municipal Committee Loharu from 03.09.1992 to 19.04.1994 i.e. for about 01 year and 07 months. The termination took place almost 30 years ago. It has come on

record that no appointment letter was issued to respondent No.2–workman and he was not appointed through employment exchange and was also not appointed by the concerned Deputy Commissioner. It has also come on record that the chungli system was removed by the Government in the year 1999 and the Municipal Committee, Loharu was dissolved in the year 2000. There appears to be no dispute that the services of respondent No.2–workman were terminated on 19.04.1994; however the demand notice was issued by him on 16.03.1999 i.e. after about five years. Therefore, all these facts become relevant when it comes to giving the relief. For all these reasons, I am of the considered view that ends of justice would be met by granting compensation in lieu of reinstatement and other consequential benefits.

22. Considering the totality of circumstances, in my opinion the ends of justice would be met if respondent No. 2–workman is paid a *lump sum* compensation of Rs. 2 lakhs. This compensation should be paid within three months from the date of receipt/production of certified copy of this order; failing which respondent No.2–workman shall also be entitled to interest at the rate of 6% per annum from the date of passing of this order. Award of the Tribunal below is modified to this extent. The writ petition is disposed of in the above terms.

23. No other point has been urged.

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

December 14, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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