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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-69-2013 (O/M)

Date of decision : 13.12.2023

Meer Singh

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sumeet Jain, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Additional A.G. Haryana.

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HARSH BUNGER, J.

1. Petitioner (Meer Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of certiorari for quashing of Award dated 20.07.2012 (Annexure P-2) to the extent whereby the reference regarding termination of service of petitioner has been answered in his favour, however, instead of reinstatement and other consequential benefits, the petitioner has been held entitled to compensation of Rs. 1,80,000/-. Accordingly, petitioner prays for modification of aforesaid award by directing that petitioner be reinstated in service with all consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as

'the Tribunal'). In the claim petition, the petitioner stated that he was engaged in the Forest Department as Beldar on 15.12.1987 on monthly payment basis and he remained posted in different ranges under the control of Divisional Forest Officer (Territorial), Bhiwani. Petitioner claimed that he worked under the supervision of various forest guards and on 01.09.2005, when he reported for his duty, he was not allowed to perform his duty and he was verbally told that his services are no more required. Therefore, the petitioner claimed that his services were terminated in an illegal and arbitrary manner and in violation of provisions of Section 25-N, Section 25-F, Section 25-G and Section 25-H of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') .

3. Respondent No. 2-Principal Chief Conservator of Forests, Haryana (hereinafter referred to as 'respondent-Management') failed to file its written statement in spite of various opportunities, accordingly, its defence was struck off, vide order dated 08.08.2008 and even the application moved by respondent-Management for recalling the said order was dismissed by the Tribunal below, vide order dated 02.05.2011.

4. The Tribunal below framed the following issues :-

“1. Whether the termination of services of workman Sh. Meer Singh is legal or not ? If so, to what relief he is entitled to ?

2. Relief.”

5. In support of its claim, the petitioner examined himself as WW1 and tendered his affidavit Ex.WW1/A wherein he reiterated the facts mentioned in the claim petition. In cross-examination, it was suggested to the

petitioner that he had worked for the period from 15.12.1987 to 31.08.2005 with heavy breaks and that he left the job of his own, however, the said fact was denied by the petitioner herein.

6. It has come on record that during the pendency of proceedings before the Tribunal below, the petitioner moved an application for issuance of directions to the Divisional Forest Officer (Territorial), Bhiwani for production of record. On the said application, a direction was issued to respondent-Management to produce the record, however, only a part of record for the period from January 1996 to December 1999 was produced and the other record was not produced and neither any explanation was offered for non-production of the same. Accordingly, the Tribunal below agreed with the contention raised on behalf of petitioner that an adverse inference should be raised against respondent-Management for non-production of record. It was held that the claim of the petitioner regarding his continuous employment with respondent-Management for the period from 15.12.1987 to 31.08.2005 will have to be accepted.

7. It appears that at the time of arguments before the Tribunal below, the plea raised by the petitioner regarding violation of provisions of Section 25-N of 1947 Act was dropped and taking into account that the petitioner has rendered continuous service under respondent-Management from 15.12.1987 to 30.08.2005 and respondent-Management having failed to produce any material to show that at the time of terminating the services of the petitioner, the provisions of Section 25-F of 1947 Act had been complied with, accordingly, it was held that the termination of services of the petitioner

was bad in the law for the violation of provisions of Section 25-F of 1947 Act.

The claim of petitioner regarding violation of provisions of Section 25-G and Section 25-H of 1947 Act was not proved on record.

8. The Tribunal below has granted the following relief to the petitioner :-

“17. In this case, taking into consideration the fact that the appointment of the petitioner to the post was de hors of the rules as no applications were called from the general public to fill up the post nor the names of eligible candidates were called from the employment exchange, I am of the view that compensation instead of reinstatement is the appropriate relief which keeping in view the length of his service is quantified at Rs. 1,80,000/- i.e. at the rate of 10,000/- for each completed year in service. This issue is answered accordingly.

Relief

18. As a result of above discussion, the reference is answered in favour of the petitioner to the effect that the termination of his services was vitiated due to non-compliance of Section 25-F of the Act and he is awarded just and reasonable compensation of Rs. 1,80,000/-. The respondent is directed to pay the amount within two months of the date of publication of award failing which the petitioner shall be entitled to recover said amount from the respondent with interest at the rate of 8% per annum from the date of publication of award till realization.”

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

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

11. Concededly, the aforesaid Award dated 20.07.2012 (Annexure P-2) has not been impugned by respondent-Management.

12. 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.

13. On the other hand, learned State counsel appearing for respondent-Management 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.

14. Here, it would be gainful to refer to judgment of Hon'ble the Supreme Court in the case of B.S.N.L. Versus Bhurumal, 2014 (3) SCT 49, wherein it was 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....”

15. 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.

16. 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.

17. In the instant case, there is no dispute that the petitioner has rendered continuous service from 15.12.1987 to 30.08.2005 i.e. for about 18 years and a finding of fact has been returned by the Tribunal below that while terminating the services of the petitioner, the provisions of Section 25-F of 1947 Act have not been complied with and, therefore, the termination of services of the petitioner was bad for violation of provisions of Section 25-F of 1947 Act, coupled with the fact that respondent-Management has not laid any challenge to the aforesaid findings and award dated 20.07.2012 (Annexure P-2) and also considering that the termination of services of the petitioner took place about 18 years ago and that the petitioner has been litigating with respondent-Management since year 2007, therefore, I am of the view that compensation awarded to the petitioner is on the lower side.

18. 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. 1,80,000/- to Rs. 4,00,000/-. Respondent-Management is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 1,80,000/-, 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.

19. The instant writ petition is disposed of in the aforestated terms.

20. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

13.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No