

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

(1)

CWP-6483-2014 (O&M)

BACHNI DEVI

...Petitioner

Versus

PRINCIPAL SECRETARY, GOVERNMENT OF
PUNJAB EDUCATION DEPARTMENT,
CIVIL SECRETARIAT, CHANDIGARH AND ORS.

...Respondents

(2)

CWP-902-2019 (O&M)
Date of decision :12.10.2023

BACHNI DEVI

...Petitioner

Versus

ASSISTANT LABOR COMMISSIONER, PATIALA,
DISTRICT PATIALA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Narender Singh Kamboj, Advocate
for the petitioner(s).

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER, J.

1. This order shall dispose of two writ petitions bearing **CWP-6483-2014** titled as *Bachni Devi vs Principal Secretary and others* and **CWP-902-2019** titled as *Bachni Devi vs Assistant Labour Commissioner and others*, as the relief sought in these petitions is inter-related.

2. **CWP-6483-2014** titled as *Bachni Devi vs Principal Secretary and others*, has been filed by petitioner-Bachni Devi, seeking a writ in the nature of *certiorari* for quashing the order dated 02.05.2012 (Annexure P-13) ; whereby the claim for regularization of her services had

been rejected by the District Education Officer (SE) Patiala by holding that she was being paid from school funds and her appointment had not been made under any norms.

3. Vide **CWP-902-2019** titled as ***Bachni Devi vs Assistant Labor Commissioner, Patiala, District Patiala***, the petitioner is seeking quashing of impugned Award dated 16.10.2018 (Annexure P-10) to the extent whereby, she was not held entitled to relief of re-instatement with back wages and instead, she was granted compensation of Rs.10,000/- only.

4. Briefly, the petitioner is stated to have been appointed on 01.01.1993 as Chowkidar-cum-Peon in the Government High School, Manakpur, Tehsil Rajpura, District Patiala (respondent No.4). Petitioner claims that she approached the Management for her absorption in the vacant post of Peon on regular basis by submitting a representation dated 01.12.2011; however, since no response was received in that regard, accordingly, she filed ***CWP-1471-2012*** before this Court, which was disposed of with a direction to the respondent authorities to consider the claim of the petitioner in her representation. It appears that vide order dated 02.05.2012 passed by respondent No.3-District Education Officer (Sr. Sec.), Patiala , the claim of the petitioner was rejected. Order dated 02.05.2012 (Annexure P-13) is subject matter of challenge in ***CWP-6483-2014***.

5. The petitioner claims that subsequently, respondent No.4-Principal Government High School, Manakpur, Tehsil Rajpura, District Patiala, informed her that her services are no more required and hence, the same were terminated on 08.01.2013. Accordingly, the petitioner raised an industrial dispute by serving a demand notice dated 22.02.2013;

whereupon, the conciliation proceedings were conducted. However, the then Assistant Labour Commissioner, Patiala passed an order dated 23.05.2013, rejecting the demand notice of the petitioner; whereupon, she instituted an appeal, which was also dismissed on 05.09.2013 (Annexure P-8).

6. Being dis-satisfied against the orders dated 23.05.2013 (Annexure P-5) and 05.09.2013 (Annexure P-8), the petitioner approached this Court by way of filing **CWP-25108-2013**, which was allowed by setting aside the afore-said orders dated 23.05.2013 and 05.09.2013 and a direction was issued to the Assistant Labour Commissioner, Patiala to send a report to the appropriate government, as contemplated under Section 12(4) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act, 1947'). It was further directed that the appropriate government shall thereafter act upon the report strictly in accordance with law in exercise of its power under Section 10(1) read with Section 12(5) of the Act, 1947.

7. It appears that thereafter, the dispute was referred for adjudication to the Industrial Tribunal, Patiala.

8. The learned Presiding Officer, Industrial Tribunal, Patiala, vide Award dated 16.10.2018 answered the reference in favour of the workman. However, the petitioner was not held entitled to any relief of reinstatement with back wages and instead compensation of Rs.10,000/- was awarded to her.

9. Accordingly, the petitioner has impugned the afore-stated Award dated 16.10.2018 passed by the learned Presiding Officer, Industrial Tribunal, Patiala, before this Court in the present writ petition.

10. Learned counsel for the petitioner submits that the learned

Tribunal below has erred in law and facts in not granting the relief of reinstatement with back wages to the petitioner despite holding that the services of the petitioner were terminated in violation of the provisions of Section 25-F of the Act, 1947.

11. It is submitted that the petitioner was a regular employee for the last more than 20 years with the respondent-Management so her services were liable to be restored. It is submitted that the learned Tribunal below has acted arbitrarily in denying the relief to the petitioner and instead granted a meagre compensation of Rs.10,000/- only. Learned counsel for the petitioner submits that the relief could not have been denied to the petitioner only on the ground that her appointment was not made in accordance with the relevant statutory Recruitment Rules.

12. On the other hand, learned State counsel has opposed the prayer of the petitioner on the ground that the petitioner was not appointed after following the due process of law and that it was not a regular appointment. It is submitted that although, the termination of the services of the petitioner has been held to be in violation of the provisions of Section 25-F of the Act, 1947; however, it is well settled that merely on that account, the petitioner is not entitled to reinstatement. Learned State counsel has supported the Award passed by the learned Tribunal below by submitting that an appropriate relief has already been granted to the petitioner and no further interference is required to be made in the said Award. Accordingly, prayer for dismissal of the instant writ petition has been made.

13. I have heard learned counsel for the parties and perused the paper book with their able assistance.

14. The learned tribunal below while passing the impugned Award

dated 16.10.2018, returned the following findings:

“12. It is the case of the workwoman that she joined the management on 01.01.1993 as Peon at Government High School, Manakpur and worked till 07.01.2013 and she was getting the salary of Rs.700/- P.M. It is also the case of the workwoman that after her termination some junior was retained by management. On the other hand, it is the stand of the respondents that the workwoman was appointed as Assistant to Class-IV employees on 07-11-2008 for a period of 89 days by the Parents Teachers Association Committee vide resolution No.12 on the consolidated payment of honorarium of Rs.700/-.

13. In order to prove her claim she herself stepped into the witness box and reiterated her entire version as mentioned in her claim application, but during cross examination she has stated that she does not remember the date month or year when she previously worked in the school at Manakpur and, thereafter, she is working continuously in the said school. She further stated that after she was terminated one Dhir Chand was kept by the management. She worked in the school for continuously 16 years.

14. On the other hand, management appeared through Sukhjit Singh, Senior Lecturer Government Service Training Center, Roopnagar, who admitted during his cross examination that Bachni Devi used to work as Assistant Class-IV on 23-12-2009 on PTA Fund and she is working since November 2008. He further stated that there is no union in their school of class-IV employees. He further stated that there is no seniority list of temporary workers. He further stated that some of the Grade-IV employees work in their school on permanent posts and their recruitment through Punjab Government. Temporary workers can also apply for the permanent

posts if they fulfill all the conditions laid down by Punjab Government. He further stated that Koshalya Devi, Sweeper and Darshan Kaur, Peon are working in their school on permanent basis and both have been retired. Further stated that they have kept the record of temporary employees in their school. He has not recruited any class-IV employee. He further stated that he has not regularized the services of any temporary worker during his tenure nor he is having any authority. He has further stated that he has not placed on record any document to prove the working of Bachni Devi, Government Elementary School Mahinderganj, Rajpura. He further stated that the salary to the temporary workers is given out of PTA Fund. He further stated that no PTA employee mentioned in Ex.X2 was kept on permanent basis. Even Dhir Chand Chowkidar has not been made permanent. He has further stated that Bachni Devi workwoman was removed from the services as there was lack in PTA Funds. He has further stated that they remove Bachni Devi from the services after putting resolution on 30-09-2012 and she was told not to come from 20-12-2012. He has further stated that no employee kept by them in place of Bachni Devi workwoman. He further stated that Bachni Devi does not fulfill the conditions of service.

15. Apart from the aforesaid statements workwoman has also brought on record Ex.W2 her identity card with Employment Exchange, Punjab. She has also brought on record the photocopy of medical report from Civil Surgeon, Patiala Ex.W3, photocopy of the affidavit regarding declaration of her age Ex.W4, Ex.W5 regarding the date of birth demanded by the Principal of Government Senior Secondary School. Ex.W6, Ex.W7, Ex.W8, Ex.W9, Ex.W16, Ex.W23, Ex.W24 and Mark-A6 are the letters written by Bachni Devi to various departments for regularization of her job. Ex.W10 is the photocopy of the petition filed by Bachni Devi in the

Hon'ble High Court. Ex.W12 is the photocopy of the order passed by Hon'ble High Court. Ex.W14 is the photocopy of the order passed by the office of District Education Officer, Patiala. Ex.W15 is the report written to Director Education Department by Principal of Senior Secondary School, in which it has been mentioned that the workwoman was kept for 89 days and, thereafter, she was given break and again she was kept at the job. Thereafter, in May 2010 she did not join the duty after the break. She was again kept on the job on 16-07-2011 vide resolution no.30 of 11-07-2011. Ex.W17 is the photocopy of the resolution no.40 dt. 30-09-2012 vide which the services of workwoman were terminated due to lack of PTA Funds. None of the documents placed on the record by the workwoman proves that she was permanent employee of the respondent or that she continuously worked from 01-01-1993 to 08-01-2013.

16. It is settled position of law that the burden of proof is on workwoman to establish that she remained working with the Respondent Management and that she completed 240 days of service in the preceding calendar year before the termination of her services.

17. Thus it is evident that she was working as an Assistant Class-IV employee with Respondent Management, at the time of termination of her services. There is no reliable evidence on the record to establish that workwoman abandoned the job on 07-01-2013. It is evident that before terminating her services, no notice was served to workwoman. Even no retrenchment compensation was given to her at the time of termination of her service, as per the provisions of Section 25-F of Industrial Disputes Act, 1947. So, it is evident that services of workwoman was terminated in violation of the provisions of Section 25-F of Industrial Disputes Act, 1947.

18. In recent times, trends have been changing regarding the labour laws, in our country. Non-compliance of the provisions of the Section 25-F of Industrial Disputes Act, 1947, although may lead to the grant of the relief of reinstatement with full back wages and continuity of service in favour of retrenched workwoman, the same would not mean that such relief is to be granted automatically or as a matter of course, as has been held by the Hon'ble Supreme Court in **Haryana State Electronics Development Corporation Ltd. Vs. Mamni 2006(2) LLJ(SC) Page 744**. In the said case, Hon'ble Supreme Court modified impugned award by directing that the workwoman shall be compensated by payment of Rs.25000/- instead of order of reinstatement with back wages.

19. The employment in question is a public Employment governed by rules and regulations. Workwoman was not qualified to be appointed as Assistant Class-IV employee as stated by MWI Sukhjit Singh. The appointment of workwoman as Assistant Class-IV employee was not made as per proper procedure. Her services were never regularized. Such type of ad-hoc or temporary appointment being contrary to the provisions of Article 14 & 16 of Constitution are illegal, has been held by the Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi & others 2006(2) LLJ Page 722 (SC)**.

20. In the light of the above discussion, it is held that workwoman is not entitled to relief of reinstatement with back wages. Taking into consideration the fact that workwoman was getting Rs.700/- P.M. as wages and she worked with the respondent Management for period of about 20 years, interests of justice shall be sub-served if compensation worth Rs.10,000/- is directed to be paid to the workwoman by the respondent management. Accordingly both these issues are disposed

of, while holding that workwoman is entitled to get compensation worth Rs.10,000/-, from the Respondent Management, in place of the order of reinstatement with back wages.

RELIEF

21. *In the light of my findings noted above, this reference is hereby answered in favour of workwoman and respondent is directed to compensate the workwoman with Rs.10,000/- (Rupees ten thousand only) within 45 days of the publication of the award, failing which the workwoman shall be entitled to the awarded amount along with interest @ 6% per annum till realization.*

File be consigned to record room after due compilation.”

15. Concededly, the services of the petitioner-workwoman have been held to be terminated in violation of the provisions of Section 25-F of the Act, 1947. The employer/respondent has not laid any challenge to the impugned award herein whereby compensation was awarded to the petitioner-workwoman.

16. The latest legal trend is award of compensation in place of reinstatement. In the case of ***BSNL v. Man Singh: (2012) 1 SCC 558***, the Apex Court held that when the termination is set aside because of violation of 25F of the Act, 1947, it is not necessary that the relief of reinstatement be given as a matter of right.

17. In ***Incharge Officer v. Shankar Shetty: (2010) 9 SCC 126***, it was *inter alia* held that in 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), the Hon'ble Apex Court

reiterated the trend by referring to the various judgments and inter alia held as under:-

"2. 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 25-F 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.

*3. In **Jagbir Singh v. Haryana State Agriculture Mktg..Board**, 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. UdayNarain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sita Ram v. MotiLal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchyat, Gajraula** and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14).*

"7. 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.

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14. 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."

*4. Jagbir Singh has been applied very recently in **Telegraph Deptt. v. Santosh Kumar Seal**, wherein this Court stated: (SCC p.777, para 11)*

"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."

18. It is worthwhile to refer to the decision of **BSNL vsBhurumal, 2014(3) SCT 49**; wherein, the Apex Court has clearly held that when there is violation of Section 25-F of the Act, 1947 the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the end of justice. The Hon'ble Supreme Court observedas under: -

"35. 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 regularized 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."

The Hon'ble Apex Court in a plethora of cases has directed compensation in lieu of reinstatement. Reference can be made to ***Mahboob Deepak v. Nagar Panchayat, Gjraula: (2008) 1 SCC 575***, ***Sita Ram v. MotiLal Nehru Farmers Training Institute: (2008) 5 SCC 75***, ***GDA v. Ashok Kumar: (2008) 4 SCC 261***.

19. The perusal of the above judgments makes it clear that new established trend is grant of compensation in lieu of reinstatement. The order of reinstatement can be granted only in exceptional cases.

20. In the present case, the cessation took place in 2013 after the petitioner had worked for 20 years and there is nothing on record to show that she was appointed after following due selection process or as per proper procedure. It has also come on record that the petitioner-workman was not qualified to be appointed as Assistant Class-IV employee. It has also not been shown that principle of 'last come first go' has been violated. Around 10 years have lapsed since the services of petitioner were terminated in the year, 2013. In these circumstances, I consider that order for re-instatement (in ***CWP-902-2019***) may not be passed in this case.

However, the compensation awarded by learned Tribunal below is to the lower side. In my considered view, interests of justice would be met if the

compensation is enhanced. Thus, this Court awards compensation in the sum of Rs. 5 lakhs, to be paid to the petitioner/workwoman within a period of eight weeks from the date of receipt of certified copy of this order, failing which the amount shall be paid with an interest @ 6% per annum.

21. In view of the discussion made here-in-above, the Award dated 16.10.2018 (Annexure P-10) passed by learned Presiding Officer, Industrial Tribunal, Patiala in ***CWP-902-2019***, stands modified accordingly.

22. Accordingly, the present petition (***CWP-902-2019***) stands disposed of in afore-stated terms.

23. All pending applications (if any) shall stand closed.

CWP-6483-2014

So far as this petition **CWP-6483-2014** filed by petitioner-Bachni Devi, seeking a writ in the nature of *certiorari* for quashing the order dated 02.05.2012 (Annexure P-13); whereby the claim for regularization of her services had been rejected by the District Education Officer (SE) Patiala, is concerned; since it has been observed here-in-above in ***CWP-902-2019*** that order for reinstatement may not be passed in such a case; thus the question of regularization of services of the petitioner, as claimed by her in the present petition, does not arise.

2. Accordingly, the present petition i.e. ***CWP-6483-2014*** filed by the petitioner, seeking her regularization is ***dismissed***, in view of order passed in **CWP-902-2019** here-in-above.

3. A photocopy of this order be placed on the file of another connected case.

October 12th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No