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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-16740-CWP-2023 in/and
CWP-7545-2013 (O/M)
Date of decision : 08.12.2023

Naveen Kumar

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and
others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Satnam Singh, Advocate for
Mr. S.K. Verma, Advocate
for applicant-petitioner.

Mr. Praveen Chander Goyal, Additional A.G. Haryana
for respondents No. 2 to 4.

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HARSH BUNGER, J.

CM-16740-CWP-2023

This is an application filed under Section 151 CPC read with
Order 9 Rule 9 CPC for restoration of main case (CWP-7545-2013).

Notice in application.

Mr. Praveen Chander Goyal, Additional A.G. Haryana accepts
notice on behalf of respondents No. 2 to 4 and submits that he has no
objection if the instant application for restoration of main case
(CWP-7545-2013) is allowed.

In view of aforesaid submission, the instant application is allowed and the main case is restored to its original number and position and same is taken on board today itself for hearing.

Application is accordingly disposed of.

CWP-7545-2013

1. Petitioner (Naveen Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the Award dated 14.01.2011 (Annexure P-4), passed by the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Tribunal'), whereby the petitioner was granted compensation of Rs. 15,000/- instead of reinstatement.

Further prayer has been made for directing respondents to reinstate the petitioner on his previous work/post with continuity of service and full back wages alongwith all consequential benefits.

2. Briefly, the petitioner raised an industrial dispute by serving demand notice under Section 2-A of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') and upon failure of the conciliation proceedings, the dispute was referred to the Tribunal below under Section 10 (1) (c) of 1947 Act for adjudication.

3. The petitioner claimed that he was appointed/engaged as Beldar with effect from 01.09.1994 and he worked as such with Public Health Sub Division No. 5 of Division No. 2, Bhiwani (renamed as Public Health Sub Division, Bawani Khera) till February, 2002 and then with Public Health Sub Division No. 3, Bhiwani till February, 2003. Certain allegations of harassment

were made against Sub Divisional Officer by stating that he was deliberately transferred to Public Health Sub Division at Loharu, which was 60 kms away where the petitioner joined. It was stated that the cause of his transfer from Bhiwani to Loharu was only to compel him to leave the services at his own. The petitioner claimed that he was marked absent despite being on duty and he was paid wages only for the period from September, 2003 to November, 2003 and the wages for the period of March, April, August and December, 2003 were withheld. It was stated that from 01.01.2004, the petitioner was not allowed to resume his duties and thereafter, services of the petitioner were terminated. It was claimed that the petitioner continuously worked from 01.09.1994 to 01.04.2004 and respondent-Department falls within the ambit of 'industry' as per Section 2 (j) of 1947 Act. It was claimed that there was relationship of employee-employer between petitioner-respondent Department. It was stated that juniors to petitioner have been retained in service after alleged date of termination of services of the petitioner. It was, therefore, stated that the termination of services of the petitioner was in violation of provisions of Sections 25-F, 25-G and 25-H of 1947 Act and amounts to unfair labour practice. It was stated that post and work assigned to petitioner was of permanent nature and same is still in existence, however, respondent-Department termed the petitioner as a casual worker. Accordingly, it was prayed that the petitioner was entitled to reinstatement with continuity of service and full back wages with all consequential benefits.

4. It appears that the Management did not file its written statement

despite opportunities and therefore its defence was struck off, vide order dated 26.09.2008 by Tribunal below.

5. Upon considering the material/evidence on record, the Tribunal below returned the following findings :-

(a) *Petitioner-workman had worked with respondent-Department from 01.01.2001 to 31.12.2003.*

(b) *Petitioner-workman completed 240 days in 12 preceding months of his termination.*

(c) *There is violation of Section 25-F of 1947 Act.*

Accordingly, the Tribunal below granted the following relief :-

“Relief

14. As a result of above discussion, the reference is answered in favour of the workman 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. 15,000/- which he would be entitled to get from the respondents.”

6. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court against the impugned Award dated 14.01.2011 (Annexure P-4).

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

8. Concededly, the aforesaid Award dated 14.01.2011 (Annexure P-4) has not been impugned by respondent-Department.

9. 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.

10. On the other hand, learned State counsel appearing for respondents No. 2 to 4 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.

11. Hon'ble the Supreme Court in the case of B.S.N.L. Versus Bhurumal, 2014 (3) SCT 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....”

12. 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.

13. 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.

14. Taking note of the fact that the petitioner was appointed as a Beldar by respondent-Department and it has been held that petitioner worked with respondent-Department from 01.01.2001 to 31.12.2003 and the services of the petitioner had been terminated in violation of provisions of Section 25-F of 1947 Act, coupled with the fact that respondent-Department has not laid any challenge to the aforesaid Award dated 14.01.2011 (Annexure P-4) and also considering that the petitioner has been litigating with respondent-Department since 2006; therefore, I am of the considered opinion that the compensation awarded to the petitioner is on the lower side.

15. Accordingly, 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. 15,000/- to Rs. 2,50,000/-. Respondent-Department is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 15,000/-, 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.

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

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

(HARSH BUNGER)
JUDGE

08.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No