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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6724-2014 (O/M)

Date of decision : 11.12.2023

Ram Subhawan

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Balbir Singh Saini, Advocate
for the petitioner.

Mr. Nitin Jain, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioner (Ram Subhawan) 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/modification of Award dated 15.11.2013 (Annexure P-1), passed by the learned Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby the termination of services of petitioner has been held to be in violation of Section 25-F of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'), however, instead of reinstatement and other consequential benefits, the petitioner has been awarded compensation of Rs. 7,000/- only.

A further prayer has been made for directing the respondent to reinstate the petitioner into service with all consequential benefits.

2. Briefly, the petitioner raised an industrial dispute by serving

demand notice and upon failure of the conciliation proceedings, the dispute was referred to the Tribunal below under Section 10 (1) (c) of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication.

3. It is pleaded case of the petitioner that he continuously worked with respondent No. 2-M/s Jain Alloys (hereinafter referred to as respondent-Management) from 01.04.2006 to 01.06.2007 as Toteman. It was contended that the services of the petitioner have been illegally terminated on 01.06.2007 without issuing any notice, chargesheet, enquiry and without giving any compensation and at the time of his alleged termination, the petitioner was drawing monthly salary of Rs. 6,000/-. It was stated that respondent-Management is covered under the Industrial Employment (Standing Orders) Act, 1946. It was claimed that juniors to petitioner have been retained in service after termination of services of the petitioner. It was therefore contended that the services of petitioner have been terminated in violation of provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act. Accordingly, prayer for reinstatement in service with continuity of service and full back wages was made.

4. The aforesaid claim was contested by respondent-Management by filing its written statement on 15.05.2008, however, respondent-Management moved an application for amendment of written statement, which was allowed and respondent-Management filed amended written statement on 12.09.2013 wherein it was stated that it never terminated the services of petitioner. It was specifically stated by respondent-Management that the petitioner worked intermittently for a very short duration

from 04.10.2006 to 23.06.2007 and thereafter the petitioner never worked with respondent-Management, accordingly, there was no question of terminating the services of the petitioner. It was submitted that the petitioner settled all the disputes with respondent-Management in the presence of Labour Inspector, Mandi Gobindgarh where Authorised Representative of the petitioner executed a receipt in token of having received an amount of Rs. 3,000/- for giving up his right for reinstatement and re-employment. It was specific stand of respondent-Management that the petitioner was gainfully employed somewhere else and a concocted story of termination of his services was made by him. Accordingly, it was submitted that the reference is not maintainable and prayer for dismissal of the same was made.

Replication to amended written statement was filed by petitioner wherein he reiterated all the averments made in the claim statement and all the averments made in amended written statement were controverted.

5. From the pleadings of the parties, issues were framed and the parties led their respective evidence.

6. Considering the material/evidence on record, the Tribunal below, vide impugned award, held as under :-

“19. As observed earlier, the workman worked for 240 days in the year immediately preceding the date of his termination and no compensation was paid to the workman at the time of termination of his services. Thus, termination of services of the workman is in violation of the provisions of Section 25-F of the I.D.A., 1947. However, taking into consideration the fact that services of the

workman were terminated in the year 2007 and a period of 6 years have elapsed and that workman worked only for one year with the respondent, interests of justice shall be served if the workman is awarded compensation instead of order of reinstatement with continuity of service with full back wages.

20. In the light of the above discussion, it is held that workman Ram Subhawan is not entitled to relief of reinstatement with back wages. Taking into consideration the fact that services of the workman were terminated in violation of Section 25-F of the I.D.A., 1947 and that he worked with the respondent for one year and that the reference remained pending in the Court for about 6 years, interests of justice shall be served if compensation worth Rs. 7000/- (Rupees seven thousand only) is directed to be paid to the workman by the Respondent. As the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this Court by the Appropriate Government for adjudication, the reference is maintainable. Accordingly, issue No. 1 is answered in favour of the workman and against the respondent and issue No. 2 is answered against the respondent and in favour of the workman.

RELIEF

21. In the light of my findings regarding above noted issues, this reference is hereby answered in favour of workman and against the respondent and respondent is directed to compensate the workman with Rs. 7000/- (Rupees seven thousand only)

within 45 days of the publication of the award, failing which the workman will be entitled to the awarded amount along with interest @ 6% per annum, from the date of passing of the award till realization. File be consigned to the record room.”

7. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court against the impugned Award dated 15.11.2013 (Annexure P-1).

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

9. Concededly, the aforesaid Award dated 15.11.2013 (Annexure P-1) has not been impugned by respondent No. 2-Management.

10. 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.

11. On the other hand, learned 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.

12. Here it would be gainful to refer to the judgement rendered by Hon'ble the Supreme Court in the case of B.S.N.L. Versus Bhurumal, 2014 (3) SCT 49, wherein the following observations were made :-

“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....”

13. 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.

14. 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.

15. Taking note of the fact that the petitioner had continuously worked with respondent-Management from 01.04.2006 to 01.06.2007 and was drawing monthly salary of Rs. 6000/- at the time of his alleged termination; 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-Management has not laid any challenge to the aforesaid Award dated 15.11.2013 (Annexure P-1) and also considering that the petitioner has

been litigating with respondent-Department since 2007; I am of the considered opinion that the compensation of Rs. 7,000/- awarded to the petitioner is on the lower side.

16. 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. 7,000/- to Rs. 50,000/-. Respondent-Management is directed to pay the enhanced amount of compensation to the petitioner (after adjusting Rs. 7,000/-, 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.

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

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

(HARSH BUNGER)
JUDGE

11.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No