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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-9036-2014
Date of Decision: 22.12.2023

Avinash Sharma

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Patiala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. R.P. Rana, Advocate
for the petitioner.

Mr. P.K. Mutneja, Advocate assisted by
Ms. Suverna Mutneja, Advocate
for respondent No.2.

HARSH BUNGER J.

1. The petitioner (Avinash Sharma) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing the award dated 24.12.2012 (Annexure P-1) passed by the Industrial Tribunal, Patiala to the extent whereby the petitioner has been denied the reinstatement into service along with back wages and only compensation of Rs.40,000/- has been granted. A further prayer has been made for issuing writ in the nature of mandamus, directing respondent No.2 to reinstate the petitioner with continuity of service along with full back wages.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by respondent No.2-Alpha Drugs India Limited

(hereinafter referred as 'respondent-Management') on the plea that he was initially appointed as technician on 05.11.1990 with the respondent-Management and thereafter, he was appointed on regular basis with effect from 14.02.1991 and his services were confirmed with the effect from 01.08.1991. The petitioner claimed that he worked continuously up to 11.12.1996, when his services were illegally terminated by the respondent-Management and that too without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as '1947 Act'). It was claimed that the petitioner was terminated in violation of Section 25-F of the 1947 Act. Accordingly, prayer was made for reinstatement with continuity in service with full back wages and other consequential benefits.

3. The aforesaid claim of the petitioner-workman was contested by the respondent-Management wherein, it was stated that the petitioner had worked up to 11.12.1996, however, it was stated that petitioner had misbehaved with the senior officials of the Management on various occasions and accordingly, it was not desirable to retain him in the organization and as such the services of the petitioner were terminated on 11.12.1996 without conducting any domestic inquiry. It was further stated that the petitioner had indulged in acts of riotous and disorderly behaviour and after the termination, the petitioner was gainfully employed in some other industrial establishment accordingly, prayer for dismissal of the claim was made.

4. On the basis of pleadings of the parties, the learned Tribunal below framed the following issues:-

“1. Whether the services of the workman have been validly terminated by the Management? OPM

2. *Whether proper statement of claim has been filed by the workman in the Court? OPW*
3. *Relief.”*

5. The parties led their respective evidence in support of their claims.

6. The Tribunal below vide impugned award dated 24.12.2012 (Annexure P-1) decided the reference by holding as under:

- (i) Since the workman was propaganda Secretary of the Mazdoor Union of the respondent-Management, his termination is due to his trade union activities and is bad in the eyes of law.
- (ii) Issues No.1 & 2 are answered to the effect that services of the workman were not validly terminated by the management as the misconduct that Avinash Sharma used abusive and filthy language, or pushing the car of senior officer is not proved.
- (iii) He is not entitled to relief of reinstatement, since he join another establishment of M/s Cepham Milk Specialities Limited.
- (iv) Since the workman remained gainfully employed after his termination from the respondent-Management, he is not entitled for the relief of reinstatement in service and therefore, he is only entitled to relief of compensation.

With the aforesaid observations, the Tribunal below granted the following relief to the petitioner:

“21. In the light of my findings regarding above issues, since the services of the workman were terminated on 11-12-1996 and Demand Notice was raised on 08-03-1997 and the reference was received in the court on 24- 03-

1998, interests of justice, shall be served if the workman is awarded compensation worth Rs. 40000/-. Resultantly, this reference is answered to the effect that Respondent management is directed to compensate the workman with RS. 40000/- within 2 months of publication of the award, failing which the workman shall be entitled for the above said amount along with interest @ 88 per annum from the date of award till it's actual realization. Award is answered accordingly in favour of the workman.”

7. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court.

8. Learned counsel for the petitioner submits that once the termination of services of the petitioner have been held to be bad, then the Tribunal below should have granted the necessary relief of reinstatement into service along with all consequential benefits, however, the Tribunal below has granted only a meager amount of compensation of Rs.40,000/- to the petitioner which is unjustified. Accordingly, it is prayed that the Writ Petition be allowed and the impugned award be quashed to the extent whereby the petitioner has been denied the reinstatement into service along with all consequential benefits and a direction be issued for reinstatement of the petitioner into service with full back wages.

9. On the other hand, learned counsel appearing for respondent No.2-Management has opposed the prayer of the petitioner on the ground that the Tribunal below has passed a well reasoned and justified order in the peculiar facts and circumstances of this case, which does not call for any interference by this Court. It is submitted that as per the settled law, even in those cases where the termination is held to be bad, even then, the grant of relief of reinstatement and other consequential benefits is not automatic and

rather it is well settled that relief of compensation is the appropriate relief, which in the instant case has been rightly granted to the petitioner.

Learned counsel for the respondent-Management has further submitted that in fact respondent No.2-Management already stands amalgamated with Punjab Chemicals and Crop Protection Limited (respondent No.3 herein) and the scheme of amalgamation was allowed by this Court on 10.03.2006, accordingly, it is submitted that the relief of reinstatement cannot be granted in the instant case. Accordingly, prayer for dismissal of the Writ Petition has been made.

10. I have heard learned counsel for the parties and perused the paper book.

11. Concededly, respondent No.2 has not laid any challenge to the impugned award dated 24.12.2012 (Annexure P-1) passed by the Tribunal below. Furthermore, there is no dispute that respondent No.2-Management already stands amalgamated with respondent No.3-Company. In the instant case, the termination of services of the petitioner have been held to be bad and he has been granted compensation of Rs.40,000/-. It is by now well settled that the relief of reinstatement and grant of other consequential benefits is not automatic. In this regard, reference can be made to the judgment rendered by the Hon'ble the Supreme Court in the case of ***B.S.N.L. Versus Bhurmal 2014(3) S.C.T. 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 v. Gitam Singh* 2013(5) Supreme Court Cases 136, the above 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. Considering the peculiar facts and circumstances of this case, since respondent No.2-Company already stands amalgamated with respondent No.3-Company and the Tribunal below has denied the relief of reinstatement by observing that after the termination of the petitioner, he was gainfully employed with another establishment, accordingly in my considered opinion, the relief of reinstatement cannot be granted to the petitioner, however, the compensation of Rs.40,000/- awarded to the petitioner is on the lower side.

14. I have also considered the submission made by learned counsel for the petitioner that since respondent No.2-Company already stands amalgamated with respondent No.3-Company, accordingly, no relief could be granted to the petitioner at this stage, however, I do not find any merit in the same. In somewhat similar circumstances, the Hon'ble Supreme Court in the case of ***"Karnataka Power Transmission Corporation Ltd. vs. The Amalgamated Elec. Co. Ltd., 2001 (1) S.C.T. 411*** observed as under:

"7. It is true that these workmen were not working in the Amalgamated Company at the time when the management of the Company was taken over on 18.12.1974 as they were illegally denied employment. Nevertheless, the Company was legally bound to reinstate these workers as early as from 25.3.1971. The award of the Tribunal shows that they were illegally denied employment with effect from 25.3.1971. When the Karnataka Electricity Board took-over the management

of the Amalgamated Electricity Company, these workers made themselves available for work, but they were not allowed to join duty by the Karnataka Electricity Board. The entire assets and liabilities of the Amalgamated Electricity Company were taken over by the Karnataka Electricity Board. Even as per Section 25-FF of the Industrial Disputes Act, 1947, where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F thereof. These workers were not paid any such compensation as per Section 25-F. Their service should be deemed to have been not interrupted by such transfer. Had the Amalgamated Electricity Company Ltd. been functioning in Belgaum, the said Company would have been legally bound to engage these workers as their workmen by virtue of the award passed by the Tribunal. The Karnataka Electricity Board being the successor-in-interest is bound to reinstate these workers as per the award passed by the Tribunal.”

15. Coming to the case in hand, the petitioner is not being granted the relief of reinstatement and other consequential benefits as already indicated above, however, considering the totality of circumstances, especially the fact that the termination of the petitioner was held to be bad and he had rendered services of almost 5 years before he was terminated coupled with the fact that respondent-Management has not raised any challenge to the impugned award and the termination had occurred almost more than 25 years ago, the interest of justice would be met if the

compensation awarded to the petitioner by the Industrial Tribunal is enhanced from Rs. 40,000/- to Rs. 3,00,000/- (after adjusting Rs.40,000/- awarded by the Tribunal below, if already paid). The respondents No.2 and 3 shall be jointly and severally liable to pay the enhanced amount of compensation of Rs.3,00,000/- to the petitioner within a period of 3 months from the date of receipt/presentation of a certified copy of this order. In case of non-payment of the amount to the petitioner within the stipulated period, the petitioner shall be entitled to claim simple interest @ 6% per annum till such time payment is not made.

17. The instant petition is accordingly disposed of with the aforesaid modification in the impugned award passed by the Labour Court.

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

22.12.2023
Himani

(HARSH BUNGER)
JUDGE

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| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |