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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-296-2017 (O/M)

Date of decision : 06.07.2023

Mohinder Singh

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and another Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ravi Gakhar, Advocate
for the petitioner.

Ms. Gurpreet Kaur, Advocate
for respondent No. 2.

HARSH BUNGER, J.

1. Petitioner (Mohinder Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 25.07.2016 (Annexure P-1), passed by the Industrial Tribunal, Patiala (respondent No. 1 herein) whereby the reference was answered in favour of the petitioner while granting compensation of Rs. 18,000/- in lieu of reinstatement with full back wages and continuity of services alongwith other consequential benefits.

Further prayer has been made for directing respondent No. 2- Management to reinstate the petitioner with full back wages, continuity of service by granting all the admissible benefits during his service tenure.

2. Briefly, the petitioner raised an industrial dispute by serving a demand notice and upon failure of the conciliation proceedings, the dispute was

referred to the Industrial Tribunal, Patiala under Section 2A and Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication.

3. The petitioner claimed that he joined M/s Cooper Automotive Ltd. (respondent No. 2-Management herein) on 19.07.2006 as a Security Supervisor and was drawing salary of Rs. 6,000/- per month at the time of illegal termination on 04.08.2011. It was categorically claimed that the petitioner had worked for more than 240 days with respondent No. 2-Management in each year as well as in the last calendar year. It was further claimed that the petitioner continuously worked with respondent No. 2-Management for the period from 19.07.2006 to 04.08.2011. It was alleged that new appointment has been made by respondent No. 2-Management after termination of services of the petitioner and even the juniors to the petitioner were retained by respondent No. 2-Management. 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. Accordingly, it was prayed that the petitioner was entitled to continuity of service with full back wages from the date of his illegal termination.

4. The aforesaid claim statement was contested by respondent No. 2-Management by filing its written statement. The petitioner-workman filed replication to the written statement filed by respondent No. 2-Management. However, it appears that when the case was at the stage of evidence of petitioner-workman, the respondent No. 2-Management was proceeded against ex-parte.

5. The Industrial Tribunal, Patiala, vide its Award dated 25.07.2016 (Annexure P-1), inter alia, held as under :-

- (i) The petitioner-workman worked with respondent-Management for 240 days in the year immediately preceding the date of his termination ;
- (ii) The petitioner-workman was not paid any compensation, notice, notice pay in lieu of notice ; and
- (iii) The services of the petitioner-workman have been terminated in violation of the provisions of Section 25-F of the 1947 Act.

6. Considering the material/evidence on record, the learned Presiding Officer, Industrial Tribunal, Patiala granted the following relief :-

“9. In the light of the above discussion, it is held that workman Mohinder Singh is not entitled to relief of reinstatement with back wages. Taking into consideration the fact that the services of workman were terminated in violation of the provisions of Section 25-F of the I.D.A. 1947 and that he was drawing Rs. 6000/- P.M. as salary at the time of his termination and that he worked with the respondents for the period from 19.07.2006 to 04.08.2011, interests of justice shall be served if compensation worth Rs. 18000/- (Rupees eighteen thousand only) is directed to be paid to the workman by the Respondent.

10. In the light of my findings noted above, this reference is hereby answered in favour of workman and against respondent and respondent is directed to

compensate the workman with Rs. 18000/- (Rupees eighteen 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.”

7. Against the aforesaid Award dated 25.07.2016 (Annexure P-1), the petitioner-workman approached this Court by filing the instant writ petition.

8. Concededly, the aforesaid Award dated 25.07.2016 has not been impugned by respondent No. 2-Management.

9. I have heard learned counsels for the parties and have also perused the paper book as well as the impugned Award dated 25.07.2016 (Annexure P-1), passed by the learned Industrial Tribunal, Patiala.

10. After arguing for some time, learned counsel for the petitioner-workman confines his prayer only with regard to enhancement of compensation as awarded by the Industrial Tribunal, Patiala, by submitting that the compensation awarded by the Industrial Tribunal is too meagre.

11. On the other hand, learned counsel for respondent No. 2-Management has opposed the prayer of the petitioner-workman 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. 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.....”

13. In the case of Assistant Engineer, Rajasthan Dev. Corpn. and another Versus Gitam Singh, 2013 (5) Supreme Court Cases 136, the abovestatd 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-workman was appointed as a Security Supervisor and he worked from 19.07.2006 to 04.08.2011 with respondent No. 2-Management continuously and his last drawn salary at the time of termination was Rs. 6,000/- per month and the services of the petitioner-workman had been termination in violation of provisions of Secction 25-F of 1947 Act, coupled with the fact that respondent No. 2-Management has not laid any challenge to the aforesaid Award dated 25.07.2016 (Annexure P-1) and also considering that the

petitioner-workman has been litigating with respondent No. 2-Management since the year 2012; therefore, I am of the opinion that the compensation awarded to the petitioner-workman 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 Industrial Tribunal, Patiala is enhanced from Rs. 18,000/- to Rs. 2,00,000/-. Respondent No. 2-Management is directed to pay the enhanced amount of compensation to the petitioner-workman within a period of three months from the date of receipt of certified copy of this order. In case, the non-payment of amount to the petitioner-workman within the stipulated period, the petitioner-workman shall be entitled to claim simple interest at the rate of 6% per annum till such time 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

06.07.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No