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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9738-2017 (O/M)

Date of decision : 04.09.2023

Sukhdev Singh

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Ludhiana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sharwan Sehgal, Advocate
for the petitioner.

Mr. Japsehaj Singh, Advocate for
Ms. Anu Pal, Advocate
for respondents No. 2 to 4.

HARSH BUNGER, J.

1. Petitioner (Sukhdev 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 modifying the award dated 23.05.2016 published on 08.07.2016 (Annexure P-1), passed by the Industrial Tribunal, Ludhiana (respondent No. 1 herein) whereby the reference was answered in favour of the petitioner and termination of service of the petitioner was set aside, however, he was granted a lump sum compensation of Rs. 1,05,000/- in lieu of reinstatement in service.

Further prayer has been made for directing respondents No. 2 to 4 to reinstate the petitioner with continuity of service and with full back wages or alternatively the lump sum compensation may be enhanced to the tune of Rs. 1,00,000/- per year of his service.

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, Ludhiana under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). The reference reads as under :-

“Whether termination of services of workman Sh. Sukhdev Singh is illegal and un-justified ? If so, to what benefit or relief the workman is entitled to ?”

3. As per the claim of the petitioner, it was pleaded that the petitioner was appointed as a Workman (Mali) w.e.f. 01.02.1995 by respondents-Punjab State Power Corporation Limited (respondents No. 2 to 4 herein) and was drawing salary of Rs. 5,000/- per month at the time of illegal termination on 31.12.2013. It was claimed that no notice or notice pay was given. It was further claimed that neither charge sheet was served upon him nor any inquiry was held and no compensation was paid to him. It was further claimed that the petitioner remained out of employment ever since the date of his termination inspite of his best efforts and, therefore, the respondent-Management has violated the provisions of the Industrial Disputes Act, 1947. Accordingly, it was prayed that the petitioner was entitled to reinstatement with continuity of service with full back wages.

The aforesaid claim of the petitioner was contested by respondent-Management by filing its written statement wherein they raised preliminary objections that the statement of claim was based on camouflaged facts and was not maintainable because the petitioner has not completed 240

days service in a calendar year. It was further replied on merits that the workman was appointed as Mali on part time basis and was paid fixed salary as per prevailing DC rates. It was next replied that the services of the petitioner were terminated alongwith other workers. The TRW Division where the petitioner was appointed was ordered to be closed and closure of the said office of respondent-Management made the service of the workman redundant and hence the service of the petitioner was terminated. The petitioner was appointed on part time basis and he was called on duty as and when required. It was further contested the since the petitioner had never completed 240 days in any of the calendar year during his service, therefore, he is not entitled to reinstatement in service. The other allegations levelled by the petitioner were denied being incorrect.

4. On the pleadings of the parties, following issues were framed :-

- “1) Whether the claimant has not worked for 240 days in a calendar year preceding the alleged date of termination ? OPM*
- 2) Whether the claim is not maintainable as it is based on the camouflaged facts ? OPM*
- 3) Whether termination of the services of the workman is justified and in order ? If not, to what relief the workman is entitled to? OPW*
- 4) Relief.”*

5. In order to prove his case, the petitioner appeared himself as WW-1 and tendered his affidavit (Ex.W/A). Respondent-Management examined MW-1 Ms. Gopika, Divisional Accountant and tendered her affidavit (Ex.M/A). She also placed on record office order dated 11.12.2013

(Ex.M/1) and order dated 31.12.2013 (Ex.M/2) issued by respondent-Management. In her cross examination, MW-1 corroborated the facts stated by the petitioner in claim statement, however, she stated that no notice was served upon the Punjab Government. She further stated that respondent-Management has more than 100 employees, however, no seniority list of the removed workmen was made and the office where the petitioner was working has since been closed.

6. The Industrial Tribunal, Ludhiana, vide its Award dated 23.05.2016 (Annexure P-1), inter alia, held as under :-

- (i) Neither any notice was served upon the workman nor he was paid notice pay and retrenchment compensation ;
- (ii) The workman has been termination from service in violation of the provisions of Sections 25F and 25N of the ID Act ; and
- (iii) There is nothing on record to show that the workman has camouflaged the facts.

7. Considering the material/evidence on record, the learned Presiding Officer, Industrial Tribunal, Ludhiana held as follows :-

“12. In the instant case, neither any such notice was served upon the workman nor he was paid notice pay and retrenchment compensation. So besides provisions of Section 25F of the ID Act the workman has been terminated from service in violation of the above said provisions of Section 25N of the ID Act. It is proved that the workman had continuously worked with the

management from 01.02.1995 to 31.12.2013 and his last drawn wages were Rs. 5,000/- per month. There is nothing on record showing that the workman has camouflaged the facts. Hence, the termination of the services of the workman is illegal. However, it is evident that the office of the management i.e. TRW Division, PSPCL, Doraha where the workman was working, has since been closed. Therefore, no useful purpose is going to be served by ordering reinstatement of the workman. Hence, I am of the view that ends of justice would be met if lump sum compensation is granted to him. So, keeping in view the length of service, last drawn wages and the above said facts and circumstances of the case, the workman is granted a lump sum compensation of Rs. 1,05,000/-, in lieu of his reinstatement into the service. All these issues are accordingly decided in favour of the workman.

13. In view of the findings on issues above, the workman is not reinstated into the service of the respondent instead he is granted a lump sum compensation of Rs. 1,05,000/-. The respondents are directed to make this payment to the workman within two months from the date of this award failing which the workman will be entitled to interest at the rate of 6% per annum from the date of this award till realization. No order as to costs. File be consigned to record room.”

8. Against the aforesaid Award dated 23.05.2016 (Annexure P-1), the petitioner-workman approached this Court by filing the instant writ

petition.

9. Concededly, the aforesaid Award dated 23.05.2016 (Annexure P-1) has not been impugned by respondent-Management.

10. I have heard learned counsels for the parties and have also perused the paper book as well as the impugned Award dated 23.05.2016 (Annexure P-1), passed by the learned Industrial Tribunal, Ludhiana.

11. 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, Ludhiana, by submitting that the compensation awarded by the Industrial Tribunal is too meagre.

12. On the other hand, learned counsel for respondent-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.

13. 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.....”

14. 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.

15. 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.

16. Taking note of the fact that the petitioner-workman was appointed as a Mali on part time basis and he worked from 01.02.1995 to 31.12.2013 with respondent-Management and his last drawn wages at the time of termination was Rs. 5,000/- per month and the services of the petitioner-workman had been terminated in violation of provisions of Sections 25-F and 25-N of 1947 Act, coupled with the fact that respondent No. 2-Management has not laid any challenge to the aforesaid Award dated 23.05.2016 (Annexure P-1) and also considering that the petitioner-workman has been litigating with respondent-Management since the year 2014; therefore, I am of the opinion that the compensation awarded to the petitioner-workman is on the lower side.

17. 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, Ludhiana is modified to the extent that the same is enhanced from Rs. 1,05,000/- to Rs. 2,00,000/-. Respondent-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, after adjusting the lump sum compensation awarded by the Industrial Tribunal, Ludhiana, if already paid to the petitioner-workman. 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.

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

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

(HARSH BUNGER)
JUDGE

04.09.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No