

272

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24494-2021 (O/M)

Date of decision : 11.10.2023

Rashpinder Kumar

..... Petitioner

Versus

Managing Director, Pepsu Road Transport Corporation and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

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

Mr. Anil Sharma, Advocate
for respondents No. 1 and 2.

:-

:-

HARSH BUNGER, J.

1. Petitioner (Rashpinder Kumar) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the impugned Award dated 16.08.2021 (Annexure P-1), passed by the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal below') to the extent, whereby relief of reinstatement with full back wages and continuity of service alongwith all other consequential benefits have been declined to the petitioner-workman and only compensation of Rs. 35,000/- has been awarded.

2. Briefly, the petitioner-Workman raised an industrial dispute by serving a demand notice dated 03.06.2014 and on failure of conciliation proceedings, the dispute was referred to the Tribunal below for adjudication. In the claim petition, it was pleaded by the petitioner-workman that he was appointed by respondent-Management on 09.12.2003 as a Conductor and was getting salary of Rs. 6,500/- per month. The petitioner-workman claimed that his services were illegally terminated on 29.05.2005 and that he worked continuously with respondent-Management for the period from 09.12.2003 to 28.05.2005. The petitioner-workman claimed that new appointment had been made by respondent-Management after termination of his (petitioner's) services and juniors to the petitioner-workman had been retained by respondent-Management while terminating the services of the petitioner-workman, accordingly, it was pleaded that the termination of services of the petitioner-workman was illegal, unconstitutional and unjustified and in violation of PRTC (Condition of Appointment and Service Regulation) Rules, 1981. The petitioner-workman claimed that the termination of his services amounts to unfair labour practice as he has been terminated in violation of Sections 25-F, 25-G and 25-H of the Industrial Tribunal Act (hereinafter referred to as '1947 Act'). It was categoric case of the petitioner-workman that he had worked for more than 240 days with respondent-Management each year as well as in the last calendar year. Accordingly, prayer was made for reinstatement of the petitioner-workman with continuity of service and full back wages alongwith all other consequential benefits.

3. The aforesaid claim was contested by respondent No. 1 (Pepsu Road Transport Corporation) (hereinafter referred to as 'respondent No. 1-Management') as well as respondent No. 2 (Ex-Servicemen Security Services) (hereinafter referred to as 'respondent No. 2-Management') by filing their separate written statements.

Respondent No. 1-Management contested the claim of the petitioner-workman on the plea that the petitioner-workman was engaged on contract basis through outsource agency, namely, M/s Ex-Servicemen Security Service (respondent No. 2-Management) as a Conductor and he was allotted conductor number and vide office order dated 29.05.2005, the services of the petitioner-workman were returned to outsource agency (respondent No. 2-Management) as he had committed misconduct of remaining unauthorizedly absent from duty. It was denied that any new appointment had been made after termination of services of the petitioner-workman and the services of those juniors were retained whose work and conduct was outstanding. It was the stand of respondent No. 1-Management that the services of the petitioner-workman were terminated in accordance with terms and conditions of the contract of employment entered into between the petitioner-workman and the outsource agency and the PRTC Rules and Regulations are not applicable to the employees whose services were procured on contract basis. It was accordingly stated there was no unfair labour practice. It was also stated that the dictum of having worked for 240 days in a year was not applicable in the case of contract workers. Accordingly, prayer for dismissal of the claim petition of petitioner-workman

was made.

4. On the other hand, respondent No. 2-Management (M/s Ex-Servicemen Security Services) also contested claim of petitioner-workman by submitting its separate reply wherein preliminary objection was raised regarding maintainability of the claim. It was also pleaded that the demand notice of the petitioner-workman was highly belated as the same had been submitted after a delay of more than 9 years from the date of alleged termination and there was no explanation for the inordinate delay. It was submitted that after such a long time, the alleged dispute had ceased to exist. It was stated that the salary was made to the petitioner-workman after it was credited into the accounts of respondent No. 2-Management by respondent No. 1-Management. The other pleas of the petitioner-workman were also controverted. Accordingly, prayer was made for dismissal of the claim petition.

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

6. After considering the case of the respective parties as well as evidence/material placed on record, the Tribunal below answered the reference in favour of the petitioner-workman by holding that the services of petitioner-workman were terminated in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'); accordingly, the petitioner-workman was held entitled to compensation to the tune of Rs. 30,000/- and another sum of Rs. 5,000/- was awarded as litigation expenses, vide award dated 16.08.2021 (Annexure P-1).

7. In the aforementioned circumstances, the petitioner-workman approached this Court by filing the instant writ petition.

8. Learned counsel for the petitioner-workman submits that the Tribunal below has erred in law by not granting the reinstatement with continuity of service and back wages to the petitioner-workman despite answering the reference in his favour. It is submitted that the Tribunal below has acted arbitrarily in denying the relief to the petitioner-workman and granted a meagre compensation.

9. 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 Tribunal below, by submitting that the compensation awarded by the Industrial Tribunal is too meagre.

10. On the other hand, learned counsel for respondent No. 1- Management has opposed the prayer of the petitioner-workman on the ground that the appropriate relief has already been granted to the petitioner-workman as the relief of reinstatement with continuity of service and full back wages alongwith all other consequential benefits is not automatic. It is submitted that the impugned award is justified and does not call for any interference. Accordingly, prayer for dismissal of the instant writ petition has been made.

11. I have heard learned counsels for the parties and have also perused the paper book with their able assistance.

12. Concededly, the services of the petitioner-workman have been held to be terminated in violation of the provisions of Section 25-F of 1947 Act. The respondent-Management(s) have not laid any challenge to the

impugned award herein whereby compensation was awarded to the petitioner-workman.

13. The latest legal trend is award of compensation in place of reinstatement. In the case of BSNL V. Man Singh; (2012) 1 SCC 558, the Apex Court held that when the termination is set aside because of violation of Section 25-F of 1947 Act, it is not necessary that the relief of reinstatement be given as a matter of right.

In Incharge Officer V. Shankar Shetty: (2010) 9 SCC 126, it was inter alia held that in those cases where the workman had worked on daily wage basis and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

In Shankar Shetty's case (supra), the Hon'ble Apex Court reiterated the trend by referring to the various judgments and inter alia held as under :-

“2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25 F of the Industrial Disputes Act, 1947 (for short “the ID Act”)? The course of decisions of this Court in recent years has been uniform on the above question.

3. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court - namely, U.P. State Brassware Corporation Ltd.

v. Uday Narain Pandey, Uttranchal Forest Development Corporation vs. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sita Ram v. Motil Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramasahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp. 330 and 335 paras 7 and 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

XXXX XXXX XXXX

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court

and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee".

4. *Jagbir Singh* has been applied very recently in Telegraph Department v. Santosh Kumar Seal wherein this Court stated :
(SCC p.777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice".

14. It is worthwhile to refer to the decision of the Hon'ble Apex Court in BSNL Versus Bhurumal, 2014 (3) SCT 49; wherein, the Apex Court has clearly held that when there is violation of Section 25-F of 1947 Act, the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the ends of justice. The Hon'ble Supreme Court observed 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.”

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. The perusal of the above judgments makes it clear that new established trend is grant of compensation in lieu of reinstatement.

17. In the present case, the services of the petitioner-workman were terminated on 29.05.2005 i.e. about 18 years ago, which have been held by the Tribunal below to be in violation of the provisions of Section 25-F of 1947 Act. It appears that the petitioner-workman rendered service for about 1 year and 6 months. Concededly, neither respondent No. 1-Management nor respondent No. 2-Management has laid any challenge to the impugned award herein whereby compensation was awarded to the petitioner-workman. However, the compensation awarded by the Tribunal below is to the lower side.

18. Accordingly, in my considered view, the interest of justice would be met if the compensation awarded to the petitioner-workman by the Tribunal below is enhanced to Rs. 1,00,000/-. Respondents are directed to pay the enhanced amount to the petitioner-workman (after adjusting compensation of Rs. 35,000/- awarded by the Tribunal below) within a period of three months from the date of receipt/presentation of certified copy of this order. In case of 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.

19. The instant writ petition is disposed of in the aforesaid terms.
20. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

11.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No