

2023:PHHC:044863-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCM-3011-LPA-2017 in/and
LPA-1399-2017 (O&M)

Date of Decision: 15.03.2023

Sports Authority of India Neta Ji Subhash, The National Institute of
Sports, Patiala, through its Executive Director

.....Appellant

Vs.

Balwinder Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Ms. Sakshi Verma , Advocate, for
Mr. Anupam Sharma, Advocate,
for the appellant.

Mr. Raj Kaushik, Advocate,
for respondent No. 1.

None for respondent No. 2.

HARPREET KAUR JEEWAN, J.

CM-3011-LPA-2017

Application for condoning the delay of 49 days in filing the
appeal is allowed, in view of the averments made in the application, duly
support by an affidavit of an official. The delay of 49 days in filing the
appeal is hereby condoned.

CM stands disposed of, accordingly.

LPA-1399-2017

1. The challenge in the Letters Patent Appeal is to the judgment
dated 17.04.2017 passed by the learned Single Judge in CWP-26840-2013,

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titled Balwinder Kumar vs. The Presiding Officer, Industrial Tribunal,

Patiala, and another, whereby the writ petition filed by respondent No. 1 (hereinafter referred to as 'the workman') was allowed and he was ordered to be reinstated with full back wages and continuity of service.

2. The workman raised an industrial dispute before the Presiding Officer, Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal') that he has worked with the appellant (hereinafter referred to as 'the management') as a Guest House Attendant for a continuous period of 6 years and was drawing a monthly salary of Rs. 2,370/- and his service were wrongly terminated on 12.09.2006 without issuance of any notice, charge-sheet and without payment of any compensation. The management denied the relationship of the workman and the management before the Tribunal and it was alleged that he was never employed by the appellant. The Tribunal held that the workman was on the roll of the management but on *ad hoc* basis and before his termination, the compliance of the provisions of Section 25-F of the Industrial Disputes Act (hereinafter referred to as 'the Act') were not made. As such, compensation of Rs. 5,000/- was awarded to the workman.

3. The learned Single Judge while considering the evidence of the witness of the management, MW-1, Avinash Kumar, L.D.C., and the fact admitted by him that the management was having a guest house and the workman was working in the said guest house observed that there was no middle-man and the management had failed to prove that employment of the workman was through a labour agency. As such, it was observed that the provisions of Section 25-F of the Act were violated, as eight years of

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continuous service of the workman had been established. The termination was accordingly held to be illegal. It was observed that the relief awarded by the Tribunal is erroneous, as such, and the workman was held entitled for reinstatement with full back-wages and continuity of service.

4. Learned counsel for the appellant submitted that respondent No. 1-workman was never engaged by the appellant. The workman has neither proved any appointment letter nor led any evidence to show that he was appointed in the year 1998, as such, he failed to discharge the onus to prove his appointment. It was further submitted that respondent No. 1-workman has also failed to prove that the appellant is an industry under Section 2 (j) of the Act, as such, the order passed by the learned Single Judge is liable to be set aside.

5. On the other hand, learned counsel for respondent No. 1 referring to the reasons recorded by the learned Single Judge, submitted that the order of reinstatement has been rightly passed by the learned Single Judge.

6. We have considered the aforesaid submissions and perused the paper-book.

7. The Award passed by the Tribunal, dated 10.10.2013 (Annexure P-3) clearly reveals that the relationship of the employee and the employer was denied by the appellant. The cross-examination of the witness examined by the management has been discussed at length by the Tribunal. The testimony of MW-1, Avinash Kumar, who is a witness of the management (A-2), clearly indicates that he has admitted that the workman was working with the management in the guest house being maintained by

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the management. There is also an admission on his part that no charge-sheet or enquiry was held and compensation was not given to the workman. He has also admitted that the guest house of the management was looked after by the management itself and even the expenses incurred on the guest house are borne by the management.

8. In view of the admission made by the witness of the appellant, the relationship of the workman and the management has been proved and even this fact has been proved that before terminating the services of the workman, the provisions of Section 25-F of the Act were not complied with which provides for granting benefits before retrenchment of an employee. Since the termination of the workman was retrenchment within the definition of Section 2 (oo) of the Act, it was mandatory to comply with the provisions of Section 25-F of the Act before terminating the services of the workman. Section 25-F of the Act provides the conditions precedent of retrenchment of a workman as per which no workman shall be retrenched by an employer until he has been paid the benefits referred to in the abovesaid Section. The said Section reads as under:-

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--
(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
(b)the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

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(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

9. Since the retrenchment of the workman was found bad in the eyes of law and the fact having been admitted by the management witness that the guest houses were being managed by the appellant, as such, respondent No. 1-workman has been rightly granted the compensation of reinstatement with continuity of service by the learned Single Judge. This fact has also been rightly considered by the learned Single Judge that the length of the service of the workman is 08 years and the stand of the management was shattered by way of admission of its own witness.

10. In such circumstances, as well as by applying the principles laid down by the Hon'ble Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014 (4) SCT 514, the reinstatement of the workman is equitable and justified to mitigate the effect of wrongful termination. The Full Bench of this Court in the aforesaid judgment was dealing with the question “*Whether a workman is liable to be reinstated even if he had been appointed by public bodies against public post not in accordance with the relevant statutory rule?*”, laid down various principles which are reproduced as under:-

“Thus the following principles are laid down:-

(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public

bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.”

11. Now the question requires consideration as to whether awarding of full back wages is equitable and justified in this case?

Keeping in view the facts and circumstances of the case, we are of the considered opinion that during the period of termination and while pursuing the litigation, the workman would have been engaged somewhere else for some period, as such, it would be equitable to award him only 50% of back-wages along with reinstatement. Accordingly, the order passed by the learned Single Judge is required to be modified accordingly.

12. Consequently, the present appeal is partly allowed and the order passed by the learned Single Judge is modified to the extent that respondent No. 1-workman is granted reinstatement with 50% back wages instead of full back-wages and continuity of service. The amount of back-wages be paid to respondent No. 1-workman within a period of 2 months from the date of the receipt of the certified copy of this order, failing which it will carry interest 8% per annum from today.

Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

March 15 , 2023
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Whether Speaking	Yes
Whether Reportable	No