

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-1952-2017 (O&M)

Date of Decision: 09.02.2023

Kesar Singh and others

.....Appellants

Vs.

Presiding Officer, Industrial Tribunal, Patiala and another

.....Respondents

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

Present: Mr. Arihant Goyal, Advocate,
for the appellants.

Mr. P.K. Mutneja, Senior Advocate, with
Mr. Abhishek Sidhu, Advocate,
for respondent No. 2.

HARPREET KAUR JEEWAN, J.

Consideration in the present Letters Patent Appeal filed by the appellants, is to the order of the learned Single Judge in **CWP-15383-2017** titled **Kesar Singh and others** vs. **The Presiding Officer, Industrial Tribunal, Patiala and another**, whereby the writ petition filed by the appellants, was partly allowed, and the amount of compensation was enhanced from ₹1,50,000/- to ₹2,00,000/-, vide order dated 18.07.2017.

2. As per the version of the appellants, Kesar Singh (appellant No. 1) joined the services as a Operator with respondent No. 2 (hereinafter referred to as the management), in the year 1981, Kaka Singh (appellant No. 4) joined the services as helper with the management on 25.03.1982, Jagdish Singh (appellant No. 3) and Vinod Kumar (appellant No. 2) also joined the services as helper on 01.05.1982, and 01.08.1982, respectively.

The services of the appellants were terminated on 09.01.1984. Appellant No. 1, Kesar Singh, was getting monthly remunerations of ₹550/-, both appellant Nos. 3 and 4, i.e. Jagdish Singh and Kaka Singh were drawing monthly remuneration of ₹500/-; whereas appellant No. 2, Vinod Kumar was drawing a sum of ₹424/- per month at the time of termination of their services. They were not permitted to join on 10.01.1984. All the appellants had worked for more than 240 days in the last calendar year. Hence, they challenged their termination by way of issuing a demand notice and reference was issued in the year 1984 to the Industrial Tribunal, Patiala (hereinafter referred to as the Tribunal).

3. The management took a plea that appellant No. 1, Kesar Singh, was engaged as apprentice. He was never in the employment of the management. Appellant No. 2, Vinod Kumar, had worked w.e.f. 01.08.1982 and wilfully left the services by participating in the strike in the beginning of September of 1983. Appellant No. 3, Jagdish Singh, joined the service on 11.05.1982 and he also wilfully left the service in September 1983 by participating in the strike. Similarly, appellant No. 4, Kaka Singh, joined on 01.07.1982 and wilfully left the service and by participating in the strike in September 1983. The strike ultimately came to an end February 1984. It is denied that the management has ever terminated the writ petitioners. The petitioners have wilfully left services by participating in the strike.

4. However, the said reference was dismissed for non-prosecution. The matter was agitated before the High Court and the same was remanded back to the Tribunal. The Tribunal passed the Award dated 23.02.2017 (Annexure P-12) whereby it was held that termination of the

services of the appellants were in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The case remained under litigation for a long period of 30 years. Considering these facts all the appellants were awarded compensation for a sum of ₹1,50,000/-.

5. The learned Single Judge while partly accepting the prayer of the appellants observed that the question of reinstatement and continuity of service does not arise at that stage. The writ petitioners had hardly served for about 02 years of service from the years 1982-84. Therefore, the question for granting reinstatement and continuity of service does not arise. However, the compensation awarded by the Tribunal to the extent of ₹1,50,000/- was enhanced to ₹2,00,000/-, considering the facts that the appellants were litigating since 1984 and two rounds of litigations have been completed.

6. The learned counsel for the appellants submitted that while passing the impugned order, the learned Single Judge did not consider the fact that the appellants had been litigating since the year 1984. They are entitled for reinstatement with continuity of services since their services were illegally terminated. The demand notice issued by the appellants was referred to the Tribunal way back in the year 1984. The said reference was dismissed for non-prosecution. The appellants approached this Court by way of filing CWP-10034-1988. The said writ petition came up for hearing and it was dismissed on 28.11.2011 (Annexure P-6), by observing that the respondent-management ceased to exist as the factory was closed, which was later on transferred to another establishment which has also been

closed down. The appellants preferred Letter Patent Appeal No. 857-2012 against the said order, whereby it was brought to the notice of the Court that the company is in existence but it has merely changed its production profile. As such the said appeal was allowed, vide order dated 31.10.2013 (Annexure P-7). Even after the decision in the said LPA, the appellants were not permitted to join the duty when they approached the management. The management filed a review application bearing No.RA-LP-20 of 2014 in LPA-857-2012. The said review was dismissed, vide order dated 22.07.2016 (Annexure P-11). Thereafter, the SLP (C) bearing No. 28214-2016 filed by the management was also dismissed by the Hon'ble Supreme Court on 09.09.2016 and respondent No. 1 was directed to decide the reference *de novo* as soon as possible, preferably within a period of 04 months from the date of intimation of the order. Referring to the aforesaid circumstances, learned counsel for the appellants submitted that the appellants have been in litigation throughout these years, so they are entitled for reinstatement instead of awarding compensation and sought for modification of the order passed by the learned Single Judge.

7. Learned senior counsel appearing for respondent No. 2-management submitted that the order passed by the learned Single Judge does not suffer from any infirmity.

8. We have considered the aforesaid submissions and perused the record. It is not disputed that the appellants had worked for a period of 02 years. It is also established on record that at the time of termination of their services, they had already completed 240 days of service in the last preceding 12 calendar months from the date of termination of their services. The management has failed to prove that the termination of the

services of the workmen were for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action. Hence, the termination of the services of the appellants who had already completed 240 days of services in the last preceding 12 calendar months amongst to retrenchment as defined under Section 2 (oo) of the Act which reads as under:-

“2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context,--

xxxx xxxx xxxx xxxx

[(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

[\(a\)](#) voluntary retirement of the workman; or

[\(b\)](#) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[\(bb\)](#) termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill- health;]”

9. Section 25-F of the Act of 1947 provides the no workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer unless the conditions laid down therein are fulfilled. 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

(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].”

10. In the present case, it has not been established that conditions of Section 25-F of the Act were complied with before the retrenchment of the appellants. Now the next question arises as to whether the reinstatement with full back-wages should have been awarded to the appellants or awarding of compensation for illegal retrenchment would be a suitable and justified relief in this case.

11. The Full Bench of this Court was dealing the question “*Whether a workman can be paid compensation for wrongful termination effected in violation of Section 25-F of the Industrial Disputes Act, 1947 in lieu of reinstatement?*”, laid down various principles in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014 (4) SCT 514. The same 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.

12. While applying the ratio of the said decision to the facts of the present case, we are considered opinion that the appellants had only worked for a period of 02 years. There has been a long litigation between

the workman and the management. There is least hope of having cordial relationship between the workman and the management after having two rounds of litigations. The cordial relationship between the workman and the management is very important for any establishment to have smooth working. Considering all these circumstances, we are of the considered opinion that awarding of compensation would redress the infringement of the right of the workman instead of his reinstatement.

13. The Apex Court in Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh 2013 (1) SCR 679, while noticing that service was of 08 months, awarded compensation of ₹50,000/-. Similarly, in Management, Hindustan Machine Tools Ltd. vs. Ghanshyam Sharma 2018 (18) SCC 80, for a period of 01 year, compensation of ₹50,000/- has been awarded. In K.V.Anil Mithra and another vs. Sree Sankaracharya University of Sanskrit and another 2021 (4) S.C.T. 415, while noticing the service of the retrenched employee for 04 years, lump sum monitory compensation of ₹2,50,000/- was awarded to the workman.

14. Applying the ratio of the said decisions and keeping in view the length of service rendered by the appellants as well as the DC rates of daily wage employees at the relevant time, awarding of compensation for a sum of ₹2,00,000/- to each appellant, is equitable and justified in this case, which has already been so awarded by the learned Single Judge.

15. In view of the above, we find no infirmity in the order passed by the learned Single Judge. Consequently, the present appeal is devoid of any merits and is accordingly dismissed.

223LPA-1952-2017 (O&M)-9-

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

(G.S. SANDHAWALIA)JUDGE

(HARPREET KAUR JEEWAN)JUDGE

February 09, 2023

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Whether SpeakingYes

Whether ReportableNo