

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-1307-2018 (O&M)

Date of Decision: 08.02.2023

Ramesh Kumar

.....Appellant

Vs.

Presiding Officer and others

.....Respondents

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

Present: Mr. Vinod Choudhri, Advocate,
for the appellant.

Mr. Gaurav Mohunta, Advocate, and
Mr. Yashasvi Goyal, Advocate,
for respondents No. 2 to 6.

HARPREET KAUR JEEWAN, J.

Consideration in the present Letters Patent Appeal filed by the appellant, is to the order of the learned Single Judge in CWP-16687-2018, titled as **Ramesh Kumar vs. Presiding Officer, Industrial Tribunal and Labour Court, U.T. and others**, whereby the writ petition was dismissed, vide order dated 11.07.2018.

2. The facts relevant for disposal of the present appeal are that the appellant (hereinafter referred to as the workman) was appointed on daily wage basis as Trade Mate w.e.f. 01.06.1998 by respondent No. 5-The Executive Engineer, Electrical Division, Municipal Corporation and he worked upto 30.05.2008. On 30.05.2008, the workman was involved in a criminal case of corruption and he remained in custody from 01.06.2008 to 30.06.2008 but ultimately he was acquitted in the said case on 29.11.2011.

3. The appellant while on bail approached respondent No. 6-Sub-Divisional Engineer, Electrical Sub-Division, Municipal Corporation, Chandigarh, by way of representation dated 04.07.2008 (Annexure P-2) permitting him to join the duty however, he was neither allowed to join the duty nor any termination/suspension order was passed. After his acquittal on 29.11.2011, the appellant again submitted a representation dated 13.12.2011 (Annexure P-3), requesting the respondent to allow him to join the duty and further submitted subsequent representations dated 20.12.2011 (Annexures P-4) and 12.01.2012 (Annexure P-5). Mr. A.K. Dadwal, SDO and Sh. Gian Chand, J.E., who were placed under suspension on account of the said criminal case were reinstated and their suspension period was also considered on duty whereas, no action was taken on the representation submitted by the appellant-workman. As the mandatory provisions under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947) had not been complied with the appellant-workman approached the respondents for reinstatement and submitted a demand notice dated 29.10.2013 (Annexure P-17) under the provisions of Section 2-A of the Act of 1947.

4. The respondents No. 2 to 6 (hereinafter referred to as 'the department') contested the claim of the workman before the Industrial Tribunal and Labour Court, U.T. Chandigarh, (hereinafter referred to as the Tribunal) and the Department took a plea that the workman was a daily wager and his services were never regularized by the management. He remained in custody from 01.06.2008 to 30.06.2008 on account of the criminal proceedings initiated against him.

5. After obtaining evidence from the parties, the Tribunal responded to the reference against the appellant-workman and declined to grant any relief.

6. The learned Single Judge dismissed the writ petition filed by the appellant-workman, whereby, the findings of the Tribunal were challenged by observing that the appellant could not place on record any material or evidence that he had made either of the representations dated 04.07.2008 (Ex. W/1) or 13.12.2011 (Ex. W/2). It was also observed that the basic facts are not disputed that the appellant was involved in a criminal case of corruption and he remained in custody from 01.06.2008 to 30.06.2008. During that period he had not informed the Department regarding his absence and even after acquittal he has not submitted any representation.

7. The learned counsel for the appellant submitted that the appellant continuously worked for 10 years w.e.f. 01.06.1998 to 30.05.2008 without any break. He got dragged in a criminal case and ultimately, he was acquitted in that case along with SDO Sh. A.K. Dadwal and J.E Sh. Gian Chand. Without any delay, the appellant approached the management, vide application/representation dated 04.07.2008 (Annexure P-2) for permitting him to join the duty but he was not allowed Sh. A.K. Dadwal, SDO and Sh. Gian Chand J.E., regular employees have been reinstated with full back wages but despite various representations, the appellant was not granted the same benefit.

8. On the other hand, the learned counsel for the department submitted that the appellant was a daily wage employee. He remained absent from duty and he has never submitted any representation and as

such the order passed by the learned Single Judge is justified and reasoned.

9. We have considered the aforesaid submissions and perused the paper-book. The appellant has continuously worked for a period of 10 years without any break. Though he was a daily wage employee but the long length of service rendered by the appellant should have been considered by the department while considering his representation. A perusal of the 'paper-book indicates' that the learned Single Judge failed to consider the fact that the appellant had filed the representations after his absence from duty from 01.06.2008 to 30.06.2008. It is also on record that the said representations were even dealt with by the department and communication was also sent to him with regard to his representations. Representation dated 04.07.2008 (Annexure P-2) is addressed to respondent No. 6-Sub-Divisional Engineer, Electrical Sub-Division No. 2, Municipal Corporation, Chandigarh. The representation dated 13.12.2011 (Annexure P-3) and the representation dated 20.12.2012 (Annexure P-4) are communications addressed to the Commissioner, Municipal Corporation, U.T. Chandigarh, the copies of the same are on record.

10. A perusal of the said representations indicate that the appellant had never concealed any facts. In the first request dated 04.07.2008 (Annexure P-2), he has clearly stated about the fact that he was detained by the CBI on 30.05.2008 in a false case of illegal gratification and that he has been released on bail w.e.f. 01.07.2008 and he further requested that he be allowed to join duty as he had served for more than 10 years of continuous service on daily wage basis. After his acquittal, he has again submitted representation to the Commissioner, Municipal Corporation, Chandigarh, vide his representation dated 13.12.2011 (Annexure

P-3/Ex.W3) and further informed that the judgment is available on the official website of the District Court regarding his acquittal by way of his representation dated 20.12.2011 (Annexure P-4). In view of these documents, the findings recorded by the Tribunal that the appellant-workman has not proved the representations are factually incorrect and the learned Single Bench also failed to duly consider these documents.

11. The appellant-workman has further placed on record copy of another detailed representation dated 12.01.2012 (Annexure P-5) which is addressed to respondent No. 2-the Commissioner, Municipal Corporation, Chandigarh. Copy of the said representation was also sent to respondents No. 3 to 5. Copy of the official noting dated 14.11.2012 (Annexure P-7) indicates that office had presented a note whereby, it was pointed out that the appellant-workman had been acquitted in the criminal case and one Sh. A.K. Dadwal, S.D.O., was already reinstated during the pendency of the Court case and Sh. Gian Chand, J.E., has been reinstated after the decision of the case. The case of the appellant-workman was submitted to the officers of the department for consideration keeping in view 10 years length of service of the appellant. Even the Law Officer has made recommendations dated 20.03.2012 (Annexure P-8) and 13.06.2012 (Annexure P-10), for allowing him to join the duty. After obtaining the advise of the Law Officer again the office note dated 25.06.2012 (Annexure P-11) was put up by the office seeking orders from the competent authority to permit the appellant to join on the application of the principle of no work pay basis.

12. However, the controversy seems to have arisen upon communication dated 26.05.2015 (Annexure P-12), whereby respondents

No. 5-The Executive Engineer, Electrical Division, Municipal Corporation, Chandigarh, had sent a communication to the appellant-workman requiring him to furnish an undertaking that he will not claim any back wages and he will not initiate any litigation in this regard. The appellant-workman had again requested vide a letter dated 29.05.2015 (Annexure P-13) that he may be permitted to join and he may be given the same benefits as given to Sh. A.K. Dadwal, SDO and Sh. Gian Chand, JE, being similarly situated. So in this background, it cannot be held that the appellant-workman did not file any representation to join or that he was not willing to join his duty.

13. From the aforesaid circumstances, we are of the considered opinion that respondents No. 2 to 6 have not permitted the appellant to join his duty. He has continuously worked for 10 years though on daily wage basis. His services were never terminated by the competent authority by passing any order. He had been repeatedly requesting the respondents to permit him for joining duties. He has even been acquitted from the criminal case regarding which he remained absent for a period of one month. The regular employees who were also accused in the said case have been permitted to join back their duties with full back wages and continued in service. The act of the respondents not permitting the appellant-workman to join the duty amounts to retrenchment which has been defined under Section 2 (oo) of the Act of 1947, reads as under:-

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

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[(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;]"

14. Section 25-F of the Act of 1947 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 in the said 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

(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].”

15. The retrenchment of the appellant was without following the conditions contained in Section 25-F of the Act.

The Full Bench of this Court while dealing with 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.

(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.”

16. While applying the ratio of the said decision to the facts of the present case, we have observed that the appellant had worked for a period of 10 years. He is requesting the respondents since 2008 for permitted him to join duty but his request has not been allowed. He has been in a long litigation with the respondents as such and there is very less hope of having cordial relationship between the workman and the department. The cordial relationship between the workman and the management is very important for the industrial peace and for optimal outcome. As such, awarding compensation, instead of reinstatement of the appellant would be appropriate relief in this case.

17. 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 granted compensation of

₹50,000/- was awarded. 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.

18. Applying the ratio of the said decisions and keeping in view the length of service of 10 years rendered by the workman and the DC rates of daily wage employees, awarding of compensation for a sum of ₹7,50,000/- would be equitable and justified in this case.

19. Consequently, the appeal is allowed and the judgment passed by the learned Single Judge, dated 11.07.2018, is set aside. The compensation be paid to the appellant-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

February 08, 2023
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Whether Speaking	Yes
Whether Reportable	No