

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

(234)

LPA-682-2017

Decided on: 13.03.2023

Rajesh Kumar

....Appellant(s)

Versus

Presiding Officer, Labour Court, Patiala and others

.... Respondent(s)

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

Present: Mr. A.S. Pannu, Advocate for
Mr. Vikas Singh, Advocate for the appellant.

Mr. B.S. Toor, Advocate for
Mr. K.S. Kang, Advocate for respondent Nos.2 & 3.

G.S. Sandhawalia, J.

The present Letters Patent Appeal requires consideration of the judgment of the learned Single Judge passed in **CWP No.19035 of 2009** filed by the appellant decided on 18.01.2017. The learned Single Judge granted a sum of ₹1 lakh as compensation to the workman which was to be paid within one month from the said date. It was also noticed that the Commissioner of Municipal Corporation, Patiala, Mr. Gurpal Singh Chahal was present and the order had been pronounced before him and he had accepted it as fair and he had assured that the payment would be made within one month from the date of the order.

2. The reasoning given as such for enhancing the compensation from ₹5,000/- as awarded by the Labour Court on 01.02.2008 (Annexure P-3) was that the employment had taken place as Pump Driver/Pump Attendant/Operator/Beldar on 02.08.1994 and the termination had taken

place on 17.06.1995 as per the workman. The management claimed that he had worked upto 30.04.1995 only. Accordingly, the learned Single Judge while placing reliance upon the judgments of **Assistant Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh, 2013 (1) SCR 679** and **Bharat Sanchar Nigam Limited Vs. Man Singh, (2012) 1 SCC 558** enhanced the compensation. The Division Bench judgment **Municipal Council, Dina Nagar, Tehsil & District, Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (1) PLR 765** wherein ₹1 lakh was held to be payable for every year's service as adequate compensation was also kept in mind.

3. Similar view has been taken by the Full Bench in **Municipal Council, Dina Nagar, Tehsil & District, Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (1) PLR 465**, authored by one of us i.e G.S. Sandhawalia, J., on the reference made, which was decided by laying down the following principles:-

“48.....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.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of [Sections 25-F](#) and [25-B](#) of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.

49. The facts in this case demonstrate that the appointment was for a short period and the workmen had only worked for

two years but there are instances which come to the notice of this Court that workmen have continued for longer periods and in some instances for decades. Though we are not deciding on merits since the Full Bench is only to decide the question of reference claimed and in such circumstances, it cannot be held as a matter of rule that merely because the posts were not filled in accordance with the statutory provisions, monetary compensation would be the only answer and relief of reinstatement is to be denied outrightly. The Industrial Adjudicator will always take into consideration the fact that though it had a power to reinstate but while issuing any other directions wherein regularization is to be ordered on the strength of some policy, it would always keep in mind the law laid down by the Constitutional Bench in Uma Devi's case (supra) and necessarily, such an exercise is thus to be carried out in the facts and circumstances of each case and no strict straight jacket formula can be laid down that reinstatement is to be directed in all cases or to the contrary that on account of violation of [Section 25-F](#) of the Act regarding the appointments to public posts, compensation would be the only remedy.

50. In view of the above, the main appeal will go back to the Hon'ble Division Bench for a decision on merits, keeping in view the principles laid down above.”

4. In the present case it is to be noticed that the employee was drawing ₹1236/- as salary per month and the demand notice was raised on 29.06.1995. The Labour Court was, accordingly, justified in declining reinstatement on the ground that the employment was for a meager period, specially in view of the fact that the employment was on daily wage basis.

5. Thus, keeping in view the observations made by the Full Bench, we are of the considered opinion that the amount which has been enhanced by the learned Single Judge, would need no scope for further benefit to be awarded, since even in the cross-examination though the

workman had denied that he was appointed on daily wage but admitted that wages were paid on the completion of the month. Resultantly, we do not find any ground to modify the order into order of reinstatement, in view of the peculiar facts and in view of the settled law as discussed above.

6. Resultantly, there is no merit in the present appeal and the same is dismissed.

7. However, since both the counsels are not in a position to inform whether the amount has been paid as assured before the learned Single Judge and a period of more than 6 years has gone by, the workman will be entitled to payment of interest @ 8% per annum from 18.01.2017 on the amount of ₹1 lakh till the date of payment, if the same has not been paid within the time frame fixed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

13.03.2023
Naveen

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	Yes	✓No