

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

(232)

**LPA-513-2018 (O&M)
Decided on: 20.02.2023**

**XEN OP DIVISIONAL NO. 1 AND 2 DADRI, DISTT. BHIWANI AND
& OTHERS**

....Appellant(s)

Versus

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-LABOR
COURT AND ANOTHER**

.... Respondent(s)

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

Present: Mr.Puneet Jindal, Senior Advocate with
Ms. Navroop Sawanda , Advocate for the appellants.

Mr. B.S. Rana, Senior Advocate with
Mr. Navdeep Doon, Advocate for respondent No.2.

G.S. Sandhawalia, J.

CM-1398-LPA-2018

Application for condonation of delay of 185 days in filing the appeal, is allowed, in view of the averments made in the application duly supported by affidavit. Delay of 185 days in filing the appeal is condoned.

CM stands disposed of.

LPA-513-2018 (O&M)

The present Letters Patent Appeal requires consideration of the judgment of the learned Single Judge passed in **CWP No.23594 of 2013 ‘Xen OP Divisional No. 1 and 2, Dadri, Distt. Bhiwani and & others Vs. Presiding Officer Industrial Tribunal-cum-Labor Court and another’** decided on 31.07.2017. By virtue of the said order, the learned Single Judge modified the Award of the Labour Court dated

03.01.2014 (Annexure P-1) to the extent that instead of 50% back-wages

alongwith the relief of reinstatement, the benefit of back-wages was restricted to 40%. The amount of Rs.3 lakhs which had been deposited by the department in pursuance of the interim order dated 02.12.2014 when notice of motion was issued in the present appeal which has to carry the maximum rate of interest while staying the Award was to be returned to the department by issuing a demand draft.

2. The reasons which weighed with the learned Single Judge were that the appointment of the workman as Mali was on 01.01.1987 and his services were dispensed with in December, 2000. He had served a demand notice on 06.05.2003 (Annexure P-2) and, therefore, while noticing the pronouncement of law by the Apex Court in **Bharat Sanchar Nigam Ltd. Vs. Bhurumal, (2014) 7 SCC 177**, it was held that no direct evidence for working for 15 years had been furnished by the workman and most of the documents were relatable only to two years. The delay in raising the demand notice of 3 years was accordingly taken into consideration by granting only 40% of the back-wages.

3. A perusal of the paper-book would go on to show that the claim of the workman was on the strength of the claim petition filed that he was appointed as Mali on 01.01.1987 by the respondent-Nigam at Pump House No.18, Balkara. Thereafter, he was transferred to Power House Charkhi Dadri and remained there till December, 2000. It was claimed that the post on which he was working was of permanent nature but he was treated as a daily wager and, thus, he had put in more than 240 days service till the date of termination. Neither any notice was issued to him nor any retrenchment compensation was paid to him. He had also

alleged that he was told that his services were no longer required, whereas juniors had been retained.

4. The defence as such of the appellant-Nigam was that he had never worked for a single full day and was only a part time sweeper. He had worked in the Sub-Station which falls under the jurisdiction of Executive Engineer, Rewari, and the said officer had not been impleaded as a party. The employment was for 89 days only and after the expiry of the same fresh approval and sanction was taken, which was for the same period. The policy of the Nigam dated 01.12.2000 provided that his services to be discontinued.

5. In response to the written statement, the respondent-workman had filed replication, wherein there was a denial to the fact that he was a sweeper but appointed as a part time Mali and his services were continued from 01.01.1987 to 31.12.2000 without any gap.

6. WW-2 R.M. Bhargav, Retired Sub-Station Engineer, Electricity Department had been examined to show that he was working @ Rs.775/- per month in the year 2000 and submitted that he was a part time sweeper. The Labour Court came to the conclusion that there was an admission as such regarding the fact that the workman was working with the appellant-Nigam though stated to be on part time. Muster Rolls of the workman produced by the Record Keeper of the Nigam as Ex.W-3/1 was kept in mind and, accordingly while relying upon the judgments passed in **Haryana Power General Corporation Ltd. Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court and another, 2004 (1) P&H 112, Div. Manager New India Assurance Co. Ltd. Vs. A. Sankarlingam, 2008 (4) RSJ 783 and Uttar Haryana Bijli Vitran**

Nigam Ltd. Vs. Bahadurgarh, District Jhajjar Vs. Industrial Tribunal-cum-Labour Court, Rohtak and another, 2009 (2) RSJ 766 (P&H), it was held that part time workers are falling within the definition of workman and his services had been terminated in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short '1947 Act') and, therefore, he is entitled for reinstatement. Resultantly, 50% back-wages were also granted from the date of demand notice dated 06.05.2003 while deciding the reference.

7. Senior Counsel for the appellant-Nigam Mr. Puneet Jindal has relied upon the judgment passed in **Incharge Officer and another Vs. Shankar Shetty, (2010) 9 SCC 126**, wherein an engagement of a daily wager had been brought to an end in violation of Section 25-F of the 1947 Act. The employment was initially in the year 1978 and he was terminated on 06.09.1985. The matter was referred to Labour Court, which had declined to interfere. The said order was set aside by the learned Single Judge of Karnataka High Court and it was held that the procedure had not been followed as provided under Section 25-F of the 1947 Act and reinstatement had been ordered. The Division Bench of the Karnataka High Court had dismissed the appeal and resultantly the Apex Court keeping in view the law laid down in **Jagbir Singh Vs. Haryana State Agricultural Marketing Board, (2009) 15 SCC 327** and other precedents as such held that since he was a daily wager and worked intermittently about 25 years back from the period of 1978 to 1985, ordered a sum of Rs.1 lakh as compensation.

8. It is pertinent to notice that in the said case the working periods were ranging between 57 days in the initial year while upto 335

days in the year 1980 and then also coming down to 50 days in the year 1995 before termination and, therefore, the amount of Rs. 1 lakh was awarded as compensation.

9. Similarly, in **Bharat Sanchar Nigam Limited Vs. Man Singh, (2012) 1 SCC 558**, the workman had worked with the appellant-Nigam on daily wages during the year 1984-1985 and an industrial dispute had been raised after 5 years. Resultantly, a sum of Rs.2 lakhs was awarded as compensation to the respondents while setting aside the award of reinstatements which had been upheld by the Courts below. In **Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, (2013) 5 SCC 136**, there was engagement of a daily wager for 8 months and reinstatement and continuity of service with 25% back-wages was granted and the same was set aside by granting compensation of Rs.50,000/-. It was, accordingly, held that the Labour Court has to keep in view all the factors, the nature of employment and the length of service.

10. The Full Bench of this Court 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 keeping the following three questions in mind:-

“(i) Whether the principles laid down in [State of Karnataka and others vs. Uma Devi and others \(2006\) 4 SCC 1](#) relating to appointment to public service would be applicable while considering reinstatement under the [Industrial Disputes Act, 1947](#)?

(ii) Whether the failure to fill up the public posts in accordance with the relevant statutory Recruitment Rules disentitles a workman for reinstatement?

(iii) 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?

11. In the said case the workman was appointed as a Clerk. After examining all the judgments of the Apex Court in detail, it was held that the reinstatement could not 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. If there has been violation of the provisions of 1947 Act, the provisions of [Section 25-F](#) being mandatory, the retrenchment was void *ab initio* as if it was never in operation, therefore, the employee would be deemed to be continued in service. However, a caveat was put that the right of reinstatement is not an automatic right as such and various aspects as to the nature of appointment, the availability of a post, the availability of work has to be seen. The public authorities could not claim total immunity and protection from the provisions of [Sections 25-F](#) and [25-B](#) of the 1947 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. Resultantly, it was held that no strict straight jacket formula could be laid down. The question were answered accordingly 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.”

12. In the case of **Bhurumal (supra)** as noticed by the learned Single also the termination had taken place more than 11 years back and workman had worked for almost 15 years, but there was no direct evidence and documents related to the year 2001-2002 and in such circumstances Rs.3 lakhs as compensation was paid and the Award of the Tribunal was modified.

13. Herein also as noticed the employment was for almost 13 years, approximately @ Rs.800/- per month and it has come on record that a demand had been raised after 3½ years from the termination on 06.05.2003 (Annexure P-2). The reinstatement at that stage in the year 2014 by the Labour Court after a period of 11 years would not be justified, in view of law which has been discussed above. The learned Single Judge also failed to keep these factors into mind while modifying and reducing the amount of back-wages to the extent of 40%. Herein also the appointment as such was not on regular basis as claimed and it was pleaded that the same was on part time @ Rs.800/- per month, which would have more than doubled in the subsequent years.

14. In such circumstances, keeping in view the long length of service, we are of the considered opinion that a sum of Rs.7,50,000/- would be the appropriate compensation @ Rs.60,000/- approximately per year, keeping in view the facts and circumstance of the case and the law that the reinstatement would not be a matter of right. The factum that the workman himself had not opted to raise an industrial dispute for almost 3 years would go on to show that he was working elsewhere, due to which he did not raise his claim expeditiously. In such circumstances, the

reinstatement at this belated stage on the same position as part time daily
wager would not be the appropriate relief as such.

15. Resultantly, the present appeal is allowed and the appellant-
Nigam is held liable to pay Rs.7,50,000/- as compensation to the workman
by way of demand draft within a period of 2 months from the receipt of the
certified copy of this order. In case, the said amount is not paid within the
prescribed period, the same shall carry interest element @ 8% per annum
from the date of the order till the date of actual payment to the workman.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20.02.2023
Naveen

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