

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

(1)

LPA-540-2018 (O&M)

Ram Kishan

.....Appellant(s)

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar &
others

.....Respondent(s)

(2)

LPA-1770-2018 (O&M)

The Principal Chief Conservator of Forests, Haryana & another

.....Appellant(s)

Versus

Ram Kishan & another

.....Respondent(s)

Decided on: 14.03.2023

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

Present:- None for the appellant(s) in LPA-540-2018
and None for the respondents in LPA-1170-2018.

Mr.Ankur Mittal, Addl.A.G., Haryana
and Mr.Saurabh Mago, AAG, Haryana
for the appellants in LPA-1770-2018
and for respondent Nos.2 & 3 in LPA-540-2018.

G.S. Sandhawalia, J. :-

The present appeals bearing LPA-540 & 1770-2018 arise out of
common judgment of the learned Single Judge passed in CWP-23090-2012
titled *Ram Krishan Vs. Presiding Officer, Labour Court, Hissar* decided on
16.01.2018.

2. The learned Single Judge modified the award of the Labour
Court dated 27.08.2010 whereby compensation of only Rs.45,000/- had
been given and granted compensation to the tune of Rs.3,50,000/- which
would be payable within a period of 4 months. The conditional interest @

6% per annum from the date of the judgment was also granted in case the compensation was not paid within prescribed period. The reasoning given by the learned Single Judge to enhance the compensation was that the appointment was from 01.03.1991 to 31.03.2003 and the demand notice was only served on 31.12.2005. It was also observed that the appointment was on daily wage basis and there was no right to hold the post. Reliance had been placed upon **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** to enhance the compensation while approving the dictum of the Labour Court that reinstatement was not to be granted.

3. A perusal of the paperbook would go on to show that the claim was of an appointment in the Arawali Project in the Dadri Range with the Forest Department on 01.03.1991. The averment was that the project was closed from 31.10.1999 and the assets and liabilities were taken over by the Divisional Forest Officer (T), Bhiwani and after the abolition of the said project, he had worked with the Range Office(T), Charkhi Dadri and on 01.04.2003, he was not allowed to resume duty. Juniors were stated to have been retained and fresh hands had been appointed and accordingly, claim statement was also filed on the reference having been made to the Labour Court.

4. The stand of the State was that he had not worked for even a single date preceding the date of alleged termination from service and that he was a daily wager and could not claim regularization. The Forest Department was stated not to be falling within the definition of industry and the Arawali Project had closed since 31.10.1999 and he had not worked after November, 1994.

5. The Labour Court noticed that the workman had furnished all the details pertaining to his case but the respondents had not led evidence

despite availing several opportunities and the defence had been closed by order. They had not produced the record and even application had been filed for production of the record but merely working details of the workman from the year 1992 to 1994 had been placed on record and therefore, an adverse inference was drawn for withholding the best evidence. It was noticed that there was no compliance of the mandatory provisions of notice, notice pay or retrenchment compensation and resultantly, by placing reliance upon the judgment of the Apex Court in **Jagbir Singh Vs. Haryana State Agriculture Marketing Board & another, (2009) 15 SCC 327, Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal & others, 2010 (6) SCC 773 and U.P. State Brassware Corporation Ltd. & another Vs. Uday Narain Panday, (2006) 1 SCC 479** to grant compensation.

6. From the above background of the case, it would be clear that the workman has been successful to a large extent to shift the onus upon the Management since even an application had been filed for production of the record. Reliance in this regard can be placed upon the judgment of the Apex Court in **R.M.Yellatti Vs. The Assistant Executive Engineer, 2006 (1) SCC 106**. Relevant portion of the judgment reads as under:

“15. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt

or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under [Article 226](#) of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.

16. Now applying the above decision to the facts of the present case, we find that the workman herein had stepped in the witness box. He had called upon the management to produce the nominal muster rolls for the period commencing from 22.11.1988 to 20.6.1994. This period is the period borne out by the certificate (Ex.W1) issued by the former Asstt. Executive Engineer. The evidence in rebuttal from the side of the management needs to be noticed. The management produced five nominal muster rolls (NMRs), out of which 3 NMRs, Ex.M1, Ex.M2 and Ex.M3, did not even relate to the concerned period. The relevant NMRs produced by the management were Ex.M4 and Ex.M5, which indicated that the workmen had worked for 43 days during the period 21.1.1994 to 20.2.1994 and 21.3.1994 to 20.4.1994 respectively. There is no explanation from the side of the management as to why for the remaining period the nominal muster rolls were not produced. The labour court has rightly held that there is nothing to disbelieve the certificate (Ex.W1). The High Court in its impugned judgment has not given reasons for discarding the said certificate. In the circumstances, we are of the view that the division bench of the High Court ought not to have interfered with the concurrent findings of fact recorded by the labour court and confirmed by the learned single judge vide order

dated 7.6.2000 in writ petition no.17636 of 2000. This is not, therefore, a case where the allegations of the workman are founded merely on an affidavit. He has produced cogent evidence in support of his case. The workman was working in SD-1, Athani and Ex.W1 was issued by the former Asstt. Executive Engineer, Hipparagi Dam Construction Division No.1, Athani-591304. In the present case, the defence of the management was that although Ex.W1 refers to the period 22.11.1988 to 20.6.1994, the workman had not worked as a daily wager on all days during that period. If so, the management was duty bound to produce before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex.W1). In the circumstances, the division bench of the High Court had erred in interfering with the concurrent findings of fact.”

7. However, the stand of the Department, as noticed, is very specific that there were heavy breaks and they had furnished the details of the workman for the period from 1992 to 1994 also which has already been reproduced by the Labour Court in its award which would go on to show that the workman had worked for the month of March, 1992 but thereafter, had worked in June, 1992. Similarly, in 1993, he had worked in February, 1993 and not worked in March, 1993. Similarly, there was a break from July to August, 1993 and for October and November, 1993. There was continuity in the year 1994 from February. The stand of the State also was that he had worked only till 31.12.1999 since the project had been closed on 31.10.1999.

8. In such circumstances, we are of the considered opinion that apparently, the service was for a period of approximately 8 years and it was intermittent working and not constant and the award of Rs.3,50,000/- was

just compensation. The nature of employment admittedly was also on account of a contract which was entered into because of the Arawali Project being funded and the moment the same was over, termination had taken place. In such circumstances, we are of the considered opinion that the observations made by the Full Bench in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur Vs. Presiding Officer, Labour Court, Gurdaspur & another, 2015 (1) PLR 465**, authored by one of us (G.S.Sandhawalia J.), would be fully applicable, relevant portion of which reads as under:

“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.”

9. Keeping in view the above and the nature of the employment which was for a specific project, we are of the considered opinion that reinstatement was rightly not granted and the workman could not have any grouse, as such. Accordingly, we are of the opinion that the learned Single Judge is justified in enhancing the compensation for the period of service since the period of constant work is for about 8 years. In such circumstances, we are of the considered opinion that the amount awarded was just and appropriate and is not liable to be interfered with at the asking of the workman who has sought reinstatement at this point of time as admittedly even the demand notice was belated and the award was passed almost a decade later from the date retrenchment had taken place as per the case of the State.

10. Reliance can be placed upon the judgment of the Apex Court passed in **Bharat Sanchar Nigam Ltd. Vs. Bhurumal, (2014) 7 SCC 177**. The consistent view of the Apex Court is to grant compensation for short service, as has been noticed in **Haryana Urban Development Authority Vs. Om Pal, (2007) 5 SCC 742** wherein Rs.25,000/- was granted for the service of one year whereas in **Uttaranchal Forest Development Corporation Vs. M.C. Joshi, (2007) 9 SCC 353**, for a period of 2 years, a sum of Rs.75,000/- was granted. Similarly, in **Asst. Engineer, Rajasthan**

Development Corporation & another Vs. Gitam Singh, 2013 (1) SCR

679, the said view was followed while noticing that the service was of 8 months and thus, compensation of Rs.50,000/- was granted. Similarly, in **Management, Hindustan Machine Tools Ltd. Vs. Ghanshyam Sharma, 2018 (18) SCC 80**, for a period of one year, compensation of Rs.50,000/- had been granted. In **K.V.Anil Mithra & another Vs. Sree Sankaracharya University of Sanskrit & another, 2021 (4) SCT 415**, for a period of little over 4 years, amount awarded was Rs.2,50,000/- in lieu of the reinstatement and backwages of 50% which was granted and accordingly, modified.

11. The claim of the State for challenging the compensation is without any basis keeping in view the fact that they had utilized the service of the workman for over 8 years and did not follow the procedure prescribed of notice, notice pay or retrenchment compensation and never produced the complete record also. Accordingly no case is made out for reducing the compensation as granted by the learned Single Judge.

12. In view of the above discussion, both the appeals are hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

14.03.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

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