

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

LPA-554-2018 (O&M)
Date of Decision: 21.02.2023

The State of Haryana through Principal Secretary, Forest Department,
Civil Secretariat, Chandigarh and another

.....Appellants

Vs.

Gulab Singh and another

.....Respondents

224-1

LPA-2336-2017 (O&M)

The State of Haryana through Principal Secretary, Forest Department,
Civil Secretariat, Chandigarh and another

...Appellants

vs.

Anand and another

....Respondents

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

Present: Mr. Ankur Mittal, Addl, A.G., Haryana, with
Mr. Saurabh Mago, A.A.G., Haryana.

Mr. Tara Chand Dhanwal, Advocate,
for the respondents.

HARPREET KAUR JEEWAN, J.

1. Consideration in the present Letters Patent Appeals filed by the appellants (hereinafter referred to as the 'management') is to the order of the learned Single Judge in CWP-9238-2014, titled **Gulab Singh vs. The State of Haryana and others** and CWP-9922-2014 titled **Anand vs. The State of Haryana and others**, whereby the writ petitions filed by

respondent No. 1 (hereinafter referred to as the 'workman') were allowed, vide a common order dated 26.05.2017 and the separate Awards passed by the Industrial Tribunal-cum-Labour Court, Hisar, (hereinafter referred to as "the Tribunal"), dated 09.07.2013, were set aside. The learned Single Judge granted the relief of reinstatement to respondent No.1-workmen (in both appeals) with continuity, along with 50% back-wages on the finding that the termination of their services was illegal, unjustified and there was also violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act of 1947').

2. The brief facts of the case are that respondent No. 1-Gulab Singh (in LPA-554-2018) was engaged by the management as Beldar-cum-Mali at Hansi Range under the Divisional Forest Officer (Territorial), Forest Division, Hisar, w.e.f 01.01.2004. His services were terminated by the management on 16.01.2009. However, Respondent No. 1-Anand (in LPA-2336-2017), was also engaged by the management as Beldar-cum-Mali, at the same place, w.e.f. 27.11.2001 and his services were terminated on 08.03.2009. Both the respondents issued demand notice alleging that they had completed 240 days in a calendar year preceding the termination and their retrenchment is without any notice or payment of retrenchment compensation, as provided under Section 25-F of the Act of 1947.

3. Their disputes were referred to the Tribunal, whereby the claim made by both the workmen was declined and they preferred separate writ petitions assailing the findings of the Tribunal.

4. The learned Single Judge observed that the appellant-Forest Department has though taken a plea that the workmen were engaged on contract basis, however, no such contract was produced and merely because

in the official record the workmen are shown to have worked on contract basis would not be sufficient to conclude that they were contractual employees working on '*Theka*'. It was observed by the learned Single Judge that the stand taken by the management was meant only to deprive the workmen of their industrial rights by resorting to the stand which would amount to unfair labour practice. It was observed that the Presiding Officer easily believed the story with regard to the contractual status of the employees by refusal to consider the entire record in its correct prospective and without delving deep into the papers on file. Since the entire record was not produced by the management, it was produced selectively for a brief period was held to be with a view that it might go against the management. Hence, the learned Single Judge observed that instead of drawing an adverse inference against the management at this crucial juncture, the Labour Court fell in serious error in restricting its view to the examination of record from 2005 to 2008 alone, whereas the stand of the workmen was that they had been in employment since 2001 and 2004, respectively.

4.1. The learned Single Judge further observed that there was clear and categorical admission based on record from the Government Pleader representing the Forest Department that at least for some of the periods, payments were made on daily wage basis and salary was paid through the bills, which was fairly conceded by him, being an act of unfair labour practice. It was further observed that unfair labour practice in labour law is similar to *mala fides* and bias in service law and as such destroys the executive action and vitiates the same, as one taken in colourable exercise of power in termination. The learned Single Judge also observed that the

salary for some period was paid through bills and it was evident and sufficient to prove the claim regarding direct employment of the workmen for the period claimed by them.

4.2 The learned Single Judge next observed that Gulab Singh workman requisitioned the record from 01.01.2004 to 15.01.2009 though the record was produced, it was produced selectively. Failure to produce the entire record was required to be held against the management.

4.3 Apart from this, it was observed that both the workmen had filed their respective affidavits on 26.09.2012 that they have not signed the quotations and their signatures were forged but no handwriting expert was examined by the management or by the Labour Court regarding the same and as the onus was then shifted to the management to prove their stand in view of the contents of the affidavits. As such, it was observed by the learned Single Judge that the reliance placed by the Tribunal on the said quotations was not justified. The observations by the Tribunal were also held to the contrary to the record on the ground that the Tribunal had restricted the examination of the workman to the period from 2005 to 2008 incorrectly, on a presumption that 240 days have not been completed and were counted backwards from January and March, 2009 respectively. By applying the provisions of adverse inference, the learned Single Judge held that the stand of the management does not inspire confidence, faith and trust. They had not come clean at the trial and it was therefore held that there is a relationship of employment between the parties and by putting an end to the said relationship, there is violation of the law under Section 25-F of the Act of 1947. Hence, the respondents-workmen were ordered to be reinstated to service with continuity but by restricting the back-wages to

50%.

5. Learned counsel for the appellants-State submitted that the respondents were never engaged on daily wage basis but a contract was entered into with the respondents-workmen to get the work completed in lump sum and not on daily wages. As such, the payments which were made to the respondents-workmen were as per the contract entered into between the parties. The learned Single Judge has wrongly drawn adverse inference against the management while accepting the plea of the workmen that they were appointed on daily wage basis and not on contract basis. It was submitted that the onus always lies upon the workmen to prove that he had actually completed 240 days in a calendar year preceding the alleged date of termination but the learned Single Judge has wrongly shifted the said onus by taking an adverse inference against the management. He submitted that the order passed by the Labour Court is based upon evidence on record. Hence, the awarding of reinstatement with 50% back wages is not factually and legally justified.

6. On the other hand, the learned counsel appearing for the respondents-workmen submitted that the order passed by the learned Single Judge is justified. During the course of arguments, it was further submitted that the workmen were even ready to forgo 50% back-wages in case reinstatement is awarded.

7. We have heard the learned counsels, considered the aforesaid submissions and perused the paper-book.

8. The learned Single Judge was justified in applying the principles of adverse inference while taking into consideration that the management had produced the incomplete record. Even otherwise, it is a

matter of fact and practice that the record regarding payments and attendance of the workmen is available and the same is in the custody of the management. The workmen were justified while making a request for production of the record. The management being the party having the custody of the record but failing to produce the complete record justified the application of the principles of adverse inference. As such, the observations made by the learned Single Judge accepting the evidence of the workmen on the basis of their affidavits that they are in employment as claimed by them, i.e. respondent-Gulab Singh, w.e.f. 01.01.2004 to 16.01.2009, whereas respondent-Anand, w.e.f. 27.11.2001 to 08.03.2009 and that both the respondents-workmen had completed 240 days in 12 calendar months preceding their termination is also justified the non-production of the complete record by the management right lead to an adverse inference to be taken against them. Reliance can be placed upon the judgment of the Apex Court in **R.M.Yellatti Vs. The Assistant Executive Engineer** 2006 (1) SCC 106. Relevant observations read 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 aforestated 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.”

9. It is not disputed that the workmen were not permanent employees. They were on daily wage basis. There is no evidence on record that their appointments were made against any public post in accordance with the statutory recruitment rules. In such circumstances, a question as to whether they are entitled for reinstatement or they have an automatic right as such for issuance of a direction of reinstatement arises? The various factors such as nature of the appointment, availability of a post, availability of work and as to whether the appointment was *per se* rules and statutory provisions, length of service and delay in raising the dispute before the Tribunal are required to be considered before any Award of reinstatement could follow in case of persons appointed on short term basis and as daily

wagers. All these factors are required to be considered before awarding reinstatement. In this regard, the Hon'ble Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014 (4) SCT 514, has laid down the following principles for determination as to whether compensation should be awarded or reinstatement, where there is violation under Section 25-F of the Act. The said principles 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.”

10. Keeping in view the facts of the present case and applying the said principles and while considering that the respondents were employed only on daily wage basis, there is no permanent post available against which they were working, as such we are of the considered opinion that payment of compensation would be justified in this case instead of awarding them reinstatement.

11. It has been established that at the time of termination of the engagement of the workmen, they were not paid the statutory payments in compliance of the provisions of Section 25-F of the Act of 1947, and their termination amounts to retrenchment in view of the definition under Section 2 (oo) of the Act of 1947, 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;]”

12. In **Management, Hindustan Machine Tools Ltd.** vs. **Ghanshyam Sharma** 2018 (18) SCC 80, wherein for a period of 01 year, compensation of ₹50,000/- had been awarded and 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 was for 04 years, lump sum monetary compensation of ₹2,50,000/- was awarded to the workman. Taking a reference from these cases, we are of the considered opinion that awarding of a compensation of ₹3,75,000/- in case of workman-Gulab Singh (respondent No. 1 in LPA-554-2018) who had worked for about 05 years, would be just and equitable, whereas awarding of a sum of ₹5,60,000/- in the case of workman-Anand (respondent No. 1 in LPA-2336-2017), who had worked for a period of about 7½ year would be just and equitable in this case.

13. Consequently, both appeals are allowed and the judgment passed by the learned Single Judge, dated 26.05.2017, is set aside. The

compensation be paid to the respondents-workmen within a period of 02 months from the date of receipt of copy of this order. In case the timeline is not adhered to, the appellants shall liable to pay interest @ 8% per annum from the date of decision.

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

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

February 21, 2023
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Whether Speaking	Yes
Whether Reportable	Yes