

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

CWP-30327-2019 (O&M)
Date of Decision: 09.08.2023

SANDEEP MOHAN

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, U.T. CHANDIGARH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Brijesh, Advocate
for Mr. Rohit Ahuja, Advocate
for the petitioner.

Mr. Satish Singla, D.A.G., Haryana.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Sandeep Mohan) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking setting aside/modifying the Award dated 19.07.2019 (Annexure P-7) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh (here-in-after referred to as 'the Tribunal'); whereby, he has been granted compensation of Rs.40,000/- instead of reinstatement in service and all consequential benefits.

2. Briefly, the petitioner-workman (Sandeep Mohan) filed a statement of claim before the Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'), claiming that he was duly selected and appointed on contract basis through Advertisement published in "*Dainik Bhaskar*", as a Counter Clerk as per letter dated 07.08.2012 and he

worked continuously to the satisfaction of his superiors till his termination on 08.01.2016/19.01.2016. It was claimed that in the year-2013, nine posts of Counter Clerks were again advertised, to be appointed on contract/daily wages basis and petitioner had applied for one post reserved for Scheduled Caste. As per petitioner, a selection committee was constituted who interviewed and selected the petitioner for one post reserved for Scheduled Caste and petitioner was issued appointment letter dated 17.01.2014 and he joined duties on 21.01.2014. It was alleged by the petitioner that in September, 2015, one Naveen Chander was promoted as Supervisor and he started harassing the workman one way or the other and he (Naveen Chander) used to make false reports to higher authorities against workman; which fact was informed to higher authorities by workman as well as his father. It is the case of the petitioner-workman that his services were terminated during the period of Code of Conduct imposed due to *panchayati* elections in the State of Haryana, on the ground of mis-conduct, and that too, without issuing any charge-sheet and without holding any proper enquiry or show-cause notice. It was claimed by the petitioner that the order of termination was illegal as he had completed continuous service of more than 240 days in the preceding twelve calendar months. It was also claimed that the juniors to the petitioner-workman were retained in service and the Management had also appointed the persons to do the same work, which was being performed by the petitioner-workman. Therefore, the petitioner claimed that his services have been terminated in violation of Sections 25-F, 25-G and 25-H of the 1947 Act and accordingly, prayer was made for setting aside the termination order and reinstatement of the petitioner with all consequential benefits.

3. Per contra, the respondent-Management contested the claim of the petitioner-workman wherein, a stand was taken that the petitioner was engaged under the outsourcing policy of the State Government issued vide No.43/5/2001/1GSI dated 16.02.2009 and No.17/7/2015-3GSIII dated 06.04.2015.

4. It was the pleaded case of the respondent-Management that Advertisements dated 19.05.2012 and 27.09.2013 were issued by the Department for filling up of ten posts of Counter Clerk on contractual basis for six months and the said posts were filled up as per the circular/notification dated 16.02.2009 issued by the Government of Haryana, General Administration Department, Gen. Services-1 Branch and further, the service agreement dated 15.01.2014 was entered into between the Management and the Workman. It is the stand of the respondent-Management that the services of the workman were not terminated but his services were dis-engaged as he was found engaged in cheating by re-selling the coupons of the eatables, while performing his duty in the Civil Secretariat Canteen. It was claimed by the Management that the Supervisor of the Civil Secretariat Canteen (a unit of Hospitality Organization, Haryana) caught the workman red-handed and thereafter, an enquiry was conducted and the charges levelled against the petitioner-workman were proved. Accordingly, the order of dis-engagement of services of the petitioner was passed. Therefore, a prayer for dismissal of the claim of the workman was made.

5. From the pleadings of the parties, the issues were framed and the evidence was led by the respective parties.

6. After considering the evidence/material available on the record, the Tribunal below has returned a finding that there was no dispute with regard to the continuity of services of the workman from the year 2012 till 08.01.2016 i.e. the date of dis-engaging the services of the petitioner-workman. It was further held that no regular departmental enquiry was conducted by the management with regard to the alleged misconduct before dis-engaging the services of the workman. Accordingly, the learned Tribunal below held that the management had violated the provisions of Section 25-F of the 1947 Act and also the principles of natural justice. The Tribunal further observed that the workman was a contractual employee and the interest of justice would be sub-served, if the workman is compensated with a *lump sum* compensation of Rs.40,000/-. Accordingly, the industrial dispute was partly allowed and answered in favour of the workman.

7. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. I have heard learned counsel for the respective parties and have also gone through the paper book as well as impugned award dated 19.07.2019 (Annexure P-7) passed by the learned Tribunal below.

9. After arguing for some time, learned counsel for the petitioner confines his prayer only with regard to enhancement of compensation as awarded by the Tribunal, by submitting that the compensation awarded by the Tribunal is too meagre.

10. On the other hand, learned counsel for the respondent-State has opposed the prayer of the petitioner for enhancement of compensation by submitting that the awarded compensation is justified and accordingly, prayer for dismissal of the writ petition has been made.

11. Concededly, the services of the petitioner-workwoman have been held to be disengaged in violation of the provisions of Section 25-F of the Act, 1947. The employer/respondent has not laid any challenge to the impugned award herein whereby compensation was awarded to the petitioner-workman.

12. In ***Incharge Officer v. Shankar Shetty: (2010) 9 SCC 126***, it was *inter alia* held that in those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

In ***Shankar Shetty's*** case (supra), the Hon'ble Apex Court reiterated the trend by referring to the various judgments and *inter alia* held as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

*3. In **Jagbir Singh v. Haryana State Agriculture Mktg., Board**, delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, **U.P.State Brassware Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sita Ram v. MotiLal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchyat, Gajraula** and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14).*

"7. It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

*4. Jagbir Singh has been applied very recently in **Telegraph Deptt. v. Santosh Kumar Seal**, wherein this Court stated: (SCC p.777, para 11)*

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and

back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

13. It is worthwhile to refer to the decision of ***BSNL vs Bhurumal, 2014(3) SCT 49***; wherein, the Apex Court has clearly held that when there is violation of Section 25-F of the Act, 1947 the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the end of justice. The Hon'ble Supreme Court observed as under: -

"23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such

a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularisation (See: State of Karnataka v. Uma Devi, (2006) 4 SCC 1). Thus when he cannot claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.”

The Hon'ble Apex Court in a plethora of cases has directed compensation in lieu of reinstatement. Reference can be made to ***Mahboob Deepak v. Nagar Panchayat, Gjraula: (2008) 1 SCC 575, Sita Ram v. MotiLal Nehru Farmers Training Institute: (2008) 5 SCC 75, GDA v. Ashok Kumar: (2008) 4 SCC 261.***

14. The perusal of the above judgments makes it clear that new established trend is grant of compensation in lieu of reinstatement. The order of reinstatement can be granted only in exceptional cases.

15. Taking note of the aforesaid submission of learned counsel for the petitioner and the fact that the termination of services of petitioner was held to be in violation of Section 25F of the 1947 Act; coupled with the fact that the respondent-Management has not laid any challenge to the award passed by Tribunal and also that the services of petitioner were terminated on 08.01.2016/19.01.2016 and petitioner had been litigating with the respondent since 2016; I am of the considered opinion that the compensation awarded to the petitioner is on the lower side. Accordingly, in my considered view, the interest of justice would be met if the compensation

awarded to the petitioner by the Tribunal is enhanced from Rs.40,000/- to Rs.2,00,000/-. The respondent-Management is directed to pay the enhanced amount to the petitioner (after adjusting Rs.40,000/- awarded by the Tribunal below, if already paid) within a period of three months from the date of receipt/presentation of a certified copy of this order. In case of non-payment of the amount to the petitioner within the stipulated period, the petitioner shall be entitled to claim simple interest at the rate of 6% per annum till such time payment is not made.

16. In view of the discussion made here-in-above, the Award dated 19.07.2019 (Annexure P-7) passed by the Tribunal stands modified accordingly.

17. The instant writ petition is disposed of in the afore-stated terms.

18. All pending application/s, if any, shall also stand closed.

August 09, 2023
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No