

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4364-LPA-2019 in/and
LPA-1915 of 2019 (O&M)
Date of Decision:22.02.2023

Executive Engineer, Uttar Haryana Bijli Vitran Nigam Limited,
Jhajjar

.....Appellant

Vs.

Subhash and another

.....Respondents

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

Present: Mr. Puneet Jindal, Senior Advocate, with
Mr. Amandeep Singh Memo, Advocate, for the appellant.

Mr. Sandeep Singal, Advocate, for respondent No. 1.

HARPREET KAUR JEEWAN, J.

Consideration in the present Letters Patent Appeal filed by the appellant is to the order of the learned Single Judge, dated 12.03.2019, whereby Civil Writ Petition No. 21351-2013, titled **Executive Engineer, Uttar Haryana Bijli Vitran Nigam Limited vs. Subhash and another** filed by the appellant (hereinafter referred to as the 'management') challenging the findings of the Industrial Tribunal, Rohtak (hereinafter referred to as 'the Tribunal'), were dismissed. The challenge is also to the order dated 19.10.2019 passed by the learned Single Judge in the review petition filed by the appellant, whereby the application for reviewing the order dated 12.03.2019 passed by the learned Single Judge, was also dismissed.

2. The brief facts of the case are that respondent No. 1 (hereinafter referred to as the 'workman') was engaged as a Sweeper on

part-time basis by the management. The workman served in the office of J.E. UHBVN Limited, Machhroli, District Jhajjar, but his services were terminated on 01.01.2001 without serving any notice upon him and without paying any compensation which is violative of the provisions of Section 25-F of Industrial Disputes Act, 1947, (hereinafter referred to as the Act of 1947), as such the workman issued a demand notice and the industrial dispute was referred to the Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as the Tribunal).

3. The management took a plea before the Tribunal that the workman was working as a part-time Sweeper on daily wage basis for 1 hour on DC rates, since 01.03.1996.

4. The Tribunal relied upon the admission of MW-1 Ajay Singh, SCO, who is a witness of the management, as well as the attendance register of the workman which was produced by the management. It was held that the workman had worked from 01.03.1996 to 01.01.2001 and at the time of his termination the provisions of Section 25-F of the Act of 1947 were not complied with. The plea raised by the management that the workman was only a part-time worker and not appointed against any permanent post was repelled and to that effect the Tribunal awarded reinstatement of the workman with 50% back-wages from the date of demand notice, i.e. 16.03.2006.

5. The learned Single Judge upholding the Award passed by the Tribunal by holding that the compliance of Section 25-F of the Act of 1947 which is mandatory has not been complied by the management leading to the declaration that termination was illegal and void *ab initio*. The learned Single Judge also observed that the management has failed to show any

document on the basis of which benefit of the exception as contained in Section 2 (oo) (bb) of the Act can be given, as such, it is not a case which falls under the said Section. Hence, the termination was held to be violative of the provisions of Section 25-F of the Act of 1947. It was also observed by the learned Single Judge that the period between 01.01.2001 to 16.03.2006 was spent in *bona fide* litigation involving the parties and that period has been rightly accounted for in diminishing arrears of back wages by 50% while awarding reinstatement with continuity of service by the Tribunal.

6. The appellant filed a review petition before the learned Single Judge assailing that the Labour Court should have taken into consideration many factors as enumerated in the Full Bench decision, dated 29.11.2014 of this Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another**, 2014 (4) SCT 514.

7. The learned Single Judge dismissed the review petition by observing that to review the order dated 12.03.2019, would amount to change of opinion and there is no valid reason to alter the decision which remains subject to appeal. The appellate Court could always alter the decision in exercise of the jurisdiction under Clause X of the Letters Patent.

8. The learned Senior counsel for the appellant submitted that the dismissal of the writ petition, vide order dated 12.03.2019, and the review application dated 19.01.2019, is contrary to the decision of the Hon'ble Full Bench of this Court in **Municipal Council Dina Nagar's case** (supra). It was submitted that the workman was only working as a part-time employee for 1 hour a day and that too on daily wage basis, there was no

permanent post for the same. As such the order of reinstatement is liable to be set aside.

9. On the other hand, the learned counsel appearing for the respondent-workman submitted that the order passed by the learned Single Judge is justified.

10. We have considered the aforesaid submissions. It is not disputed that the workman has worked continuously for 240 days preceding 12 months of his termination. This fact is evident from the admission of the witness of the management who appeared before the Tribunal, as well as from the attendance record produced before the Tribunal. Though the management has taken a plea in the written statement that the workman does not fall within the definition of “workman” in terms of the provisions of Section 2 (s) of the Act of 1947 but the said objection holds no water. The definition of the workman as given under Section 2 (s) of the Act reads as under:-

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,--

xxx xxxx xxxx xxxx

(s) workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

11. In view of the said definition, respondent No. 1 falls within the definition of “workman” even though he was employed on daily wage basis. It has been held by the Apex Court in **Divisional Manager, New India Assurance Co. Ltd. vs. A. Sankaralingam** 2008 (4), RSJ 783 (SC), as also by this Court in **Uttar Haryana Bijli Vitran Nigam Limited Bahadurgarh, District Jhajjar vs. Industrial Tribunal-cum-Labour Court, Rohtak and another** 2009 (2) RSJ 766 (P&H) that even a part-time employee is also a workman as notified by the Labour Court also. It has been established that at the time of the termination of the workman, he was 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,--

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[(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. Now the next question arises as to whether for violation of the provisions of Section 25-F of the Act, the workman who was a part-time employee on daily wage basis and not working on a permanent post, and there is nothing on record to suggest that he was employed by adopting a regular procedure of employment giving wide publicity, in such circumstances as to whether his retrenchment would compulsorily require reinstatement with continuity of service for redressal of his infringement of rights under the Act or only compensation can be paid to him in lieu of reinstatement? Section 25-F of the Act of 1947 reads as under:-

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of

notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

13. In this regard, the Hon'ble Full Bench of this Court in **Municipal Council, Dina Nagar's case** (*supra*), 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.”

14. Keeping in view the fact that since it is a case of daily wage workman and also having found his termination in violation of the provisions of Section 25-F of the Act, we are to take into consideration various aspects, i.e. nature of appointment, availability of post and length of service. It is not disputed that the workman has worked, w.e.f. 01.03.1996 to 01.01.2001 on part-time basis and at the DC rates prevalent at that time, we are of the considered opinion that the redressal of the grievance of the workman-respondent No. 1 would be by way of awarding compensation instead of granting the relief of reinstatement with continuity of service and 50% of back wages as awarded by the learned Single Judge.

15. With regard to the quantum of compensation, we take

reference from the decision of Hon'ble Apex Court in Management, Hindustan Machine Tools Ltd. vs. Ghanshyam Sharma 2018 (18) SCC 80, wherein for a period of 01 year, compensation of Rs. 50,000/- has 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 for a period of 04 years, lump sum monitory compensation of Rs. 2,50,000/- was awarded to the workman.

16. As such, in the present case, awarding of compensation to the amount of Rs. 1,25,000/- since the workman was only a part-time worker working for 1 hour on daily wage basis, would be just and equitable for redressal of his grievance. Hence, the order passed by the learned Single Judge is also liable to be set aside.

17. Consequently, the present appeal is allowed, the judgment passed by the learned Single Judge, dated 12.03.2019, in the writ petition and the order dated 19.10.2019 passed in the review application are set aside. The compensation of Rs. 1,25,000/- be paid to the respondent-workman 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 be 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 22, 2023

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Whether Speaking

Yes

Whether Reportable

No