

Neutral Citation No:2024:PHHC:065696
CWP-19981-2002(O&M)and
CWP-8585-2004(O&M) 1
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207 CWP-19981-2002(O&M)

THE SECRETARY TO GOVT. OF PUNJAB, PWD (B& R),
PUNJAB CIVIL SECRETARIAT, CHANDIGARH AND ORS
.... Petitioners

Versus
MOHAN SINGH AND ANR
....Respondents

207-2 CWP-8585-2004
MOHAN SINGH Petitioner

Versus
PRESIDING OFFICER, LABOUR COURT, UNION
TERRITORY, CHANDIGARH AND ORS
....Respondents

Date of Decision: 10.05.2024

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Amit Chaudhary, DAG, Punjab
for the petitioner (in CWP-19981 of 2002).
for respondent(s) (in CWP-8585-2004).

Mr. R.K. Gautam, Advocate and
Mr. Vishal Gautam, Advocate
for petitioner-workman (in CWP-8585 of 2004)
for respondent No.1(in CWP-19981-2002).

SANJAY VASHISTH, J.(Oral)

1. By way of this common order, the fate of the aforesaid
writ petitions shall be decided as both the petitions are arising out of
same award dated 28.02.2002.

CWP-19981 of 2002 has been filed by the Management challenging the award dated 28.02.2002 passed in reference No. 13/1/4882/HII(4)/91/5945, whereby the order of reinstatement with continuity in service has been ordered by learned Labour Court.

Another CWP-8585-2004 has been filed by Workman-Mohan Singh against the award dated 28.02.2002, whereby workman was reinstated but without back wages.

2. For the sake of brevity, facts are being extracted from CWP-8585-2004.

Workman-Mohan Singh, was appointed as 'Mason' and serving with the respondent-P.W.D., (B& R) Branch, Punjab Civil Secretariat, Chandigarh with effect from 15.02.1995 on daily wage basis. His place of working was P.W.D, B & R Branch, Division No.2, Kothi No.2444, Sector 39-C, Chandigarh. In the month of October, 1995, name of the workman was changed in muster roll from Mohan Singh s/o Shri Bachan Singh to Shri Sardara Singh S/o Shri Bakshish Singh.

3. It was pleaded before the Labour Court that the workman was appointed on 15.02.1995 and was removed from service on 01.12.1995. It was further pleaded that the services of the workman were terminated without any notice, notice pay or retrenchment

compensation, thus, there is a complete violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act of 1947'). It was further pleaded that employees junior to the petitioner were retained and he was terminated from services without any reason, thus, there is violation of Sections 25-G and 25-H of the Act of 1947.

4. In the written statement filed by the Management on factual aspect it was pleaded that the workman was engaged w.e.f. 01.02.1995 and not from 15.02.1995, on daily wage basis. The workman was appointed for a short period against muster roll on the wage of Rs.73 per day by Junior Engineer, namely, Shri Kirpal Singh, who was Incharge of the work on 01.02.1995. It was also pleaded that the workman was engaged or re-engaged from time to time and it is the workman, who absented himself from duty for the complete month of July, 1995 and ultimately stopped working w.e.f 17.10.1995. Thus, the Management pleaded that it is a clear case of abandonment of service and not of termination, as claimed by the workman.

5. After framing of the issues and recording of the evidence, learned Labour Court concluded that the workman has completed 240 working days in the office of the Management.

For the sake of convenience, relevant findings recorded by learned Labour Court in paragraph Nos. 20, 21 and 22 are reproduced herebelow:

“20. On the other hand learned representative for the management has argued that the workman was engaged on daily wage basis on 1st February, 1995 worked up to 30th June, 1995 then he did not report for duty through out the month of July, 1995. He was re-arranged on 1st August, 1995 and he worked up to 16th October, 1995 and thereafter he has abandoned the job. It is argued that the workman has not completed 240 days. So, he is not entitled to the protection of the provisions of section 25 (F) of the Industrial Disputes Act. It is also argued that the present is a case of abandonment of services and the authorities with regard to the retaining of junior persons or engaging fresh persons are not of any help to the workman. it is further argued that the workman has himself examined AW-2 Baljit Singh who has specifically stated that he along with the workman had been working privately after and before their engagement with the management. It is argued that in view of this fact, the workman is not entitled to the back wages even if this Tribunal passes an order for reinstatement of the workman because from evidence led by the workman itself it is established that he had been gainfully employed.

21. I have considered the above submissions made on behalf of both the parties. From the evidence led by the workman it is established that workman has worked from 1st February, 1995 to 16th October, 1995 continuously because from the statement of document expert Jassy Anand, it is established that the muster rolls for the month of July, 1995 bears the signatures of the workman and tailles with the standard signatures of the workman on other documents. There is no rebuttal to the statement of AW. 5. If for arguments sake, it is taken that the workman has worked from 1st February, 1995 to 16th October, 1995 even then he has completed 240 days of the services. His termination was oral and he was not given any notice period pay or retrenchment compensation which amounts to illegal termination without complying with the provisions of the section 25 (F) of the Industrial Disputes Act. It has come in evidence that junior persons namely Baljit Singh and others were retained whereas the services of the workman were terminated. Fresh persons

namely Kuldip Singh and Sukhdev Singh were also engaged as Mason by the management after termination of the services of the workman.

22. *The claim of the management that it is a case of abandonment of the services by the workman is not established from the evidence available on the file. The workman has immediately served the management with the demand notice. The demand notice is dated 15th December, 1995 and the claim of the workman that he has worked with the management up to 30th November, 1995. Had he abandoned the services, then workman would not have served the management with the demand notice immediately after termination of his services. Even during the course of reconciliation proceedings the management has not offered the workman to join duty. This fact has been specifically admitted by MW-1 Kirpal Singh in his cross examination. Thus, from the evidence available on the file, it cannot be said that the present is a case of abandonment of the services of the workman. It is fully established that the present is a case of termination of the services of the workman in contravention of provision of the section 25(F) of the Industrial Disputes Act. However, I find merit in the arguments of learned representative for the management that the workman has himself examined Baljit Singh as AW. 2 who has stated in the examination-in-chief that he along with workman had been doing the private work of Mason and with the contractor also before or after termination of the services. So, the workman as gainfully employed.”*

6. While recording the findings regarding violation of Section 25 F of the Act of 1947, the facts and evidence have already been examined by the Labour Court with the help of the report of the handwriting expert, which opined that the admitted signatures of the workman are matching with the disputed signatures, which are available on the record of the Management. Not only this, in paragraph No.21 there is specific finding that one junior employee,

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namely, Baljeet Singh and some others were retained in service, whereas, the services of the workman were terminated.

7. Despite the fact available on record that the junior employees were working in the office of the Management, never any offer of reinstatement was made by the Management, during the proceedings before the Labour Court. This conduct shows the services were terminated arbitrarily and without caring about the provisions of law, which are enacted to protect the rights of the workman i.e. Industrial Disputes Act, 1947.

8. This Court has noticed that in the writ petition bearing CWP No. 19981 of 2002 filed by the Management, operation of the impugned award was stayed by the Division Bench of this Court vide order dated 17.12.2002, subject to the provisions of Section 17-B of the Act of 1947. The fact has also emerged during the course of hearing before this Court that the workman was being paid back wages uptill October, 2018, but thereafter never any amount was paid.

After getting instructions from the workman, who is present in Court, counsel submits that the workman is 70 years of age. Therefore, this could be the reason for not paying back wages w.e.f October 2018, as the workman had attained the age of superannuation. However, due to the stay of the operation of the impugned award, workman was never reinstated in service.

9. Relying upon the ratio of judgment passed by the Division Bench of this Court (Punjab and Haryana High Court) in *LPA No.1334 of 2009*, titled as, “Deputy General Manager (Telecom), Bharat Sanchar Nigam Limited, Sangrur vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another” decided on *30.01.2014*, and this Court earlier in time in *CWP-10925-2013*, titled as *BCH Electric Limited vs Presiding Officer, Labour Court-II, Faridabad and another* decided on *20.02.2024*, I am of the view that the grouse of the workman can be settled by directing Management to pay one time full and final lump-sum amount of compensation, to the workman.

10. By noticing the fact that Workman had worked in the office of Management from 15.02.1995 to 01.12.1995 i.e., for about 11 months, and the dispute being more than two decades old, this Court deems it appropriate to direct the Management to pay a lump-sum amount of Rs.4,00,000/- (Rupees Four lacs) as compensation to workman, within a period of three months from today i.e. on or before 10.08.2024, failing which, **Management would be liable to pay the lump-sum amount of compensation of Rs.4,00,000/- (Rupees Four lacs) along with interest @ 6% per annum, from 10.08.2024 onwards.**

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11. With the aforementioned observations, the present writ
petitions stand disposed of.

12. A photocopy of this order be placed on the file of another
connected case.

May 10, 2024	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no