

CWP-2674-2001

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213(2cases)

CWP-2674-2001

State of Haryana

.... Petitioner

Versus

Satpal and anr.

....Respondent

CWP-2676-2001

State of Haryana

.... Petitioner

Versus

Kuldeep Singh

....Respondent

Date of Decision:15.01.2024

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

Mr. Karan Singh, Advocate
for the respondent(s)-workmen (in both the cases).

SANJAY VASHISTH, J.(Oral)

This common order shall dispose of the aforementioned writ petitions as the question involved in both the writ petitions is one and same.

1. Facts of CWP-2674 of 2001 are as under:

Present writ petition has been filed by State of Haryana through Executive Engineer Public Health Division, Narwana for

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quashing the impugned award dated 22.08.2000 (Annexure P-5) rendered in reference No.477 of 1997/925 of 1998 issued under Section 10 (1)(c) of the Industrial Disputes Act, 1947 (for short 'the Act') by the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred as 'learned Tribunal') in favour of the respondent-workman, whereby, workman was held to be entitled for reinstatement with continuity of service and full back wages.

As per the demand notice dated 06.02.1997 sent by workman-Satpal, he was appointed as Beildar on 15.07.1995 and worked continuously uptill 23.07.1996 without any break. But, on 24.07.1996, he was terminated from service by the petitioner-Management, without following provisions of Section 25-F of the Act. Before termination of the services, Management neither issued notice; nor held any domestic inquiry; nor charge sheeted him on any account, and even, no retrenchment compensation was given. Infact, Management got annoyed with the filing of the writ petition by the Workman and thereafter, he was ousted from the service. Thus, on the basis of the demand notice, reference No.477 of 1997 was forwarded

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by respondent No.1 under Section 10 (1) (C) of the Act for its decision to the Industrial Tribunal-cum-Labour Court.

3. Facts of CWP-2676 of 2001 are as under:

Writ petition has been filed by State of Haryana through Executive Engineer Public Health Division, Narwana for quashing the impugned award dated 22.08.2000 (Annexure P-5) rendered in reference No.478 of 1997/884 of 1998 issued under Section 10 (1)(c) of the Industrial Disputes Act, 1947 (for short 'the Act') by the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred as ' learned Tribunal') in favour of the respondent-workman, whereby workman was held entitled to reinstatement with continuity of service and full back wages.

As per demand notice dated 06.02.1997 sent by workman-Kuldeep, he was appointed as Beildar on 01.06.1995 and worked continuously uptill 23.07.1996 without any break. But, on 24.07.1996, he was terminated from service by the petitioner-Management, without following provisions of Section 25-F of the Act. Before termination of the services, Management neither issued notice; nor held any domestic inquiry, nor charge sheeted him on any account

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and even, no retrenchment compensation was given. Infact, Management got annoyed with the filing of the writ petition by the Workman and thereafter, he was ousted from the service. Thus, on the basis of the demand notice, reference No.478 of 1997 was forwarded by respondent No.1 under Section 10 (1) (C) of the Act for its decision to the Industrial Tribunal-cum-Labour Court.

4. On the basis of the stand taken in the written statement and also in the writ petition, counsel for the petitioner argued that infact, during the flood time in the State of Haryana, the Services of the workmen were taken for the specific purpose by the Management. He further submits that appointment of the workmen was for a specific purpose i.e. flood work only and removal of him/her on completion of the project/work would not attract the provisions of the Act and therefore, the termination of services of the respondents namely Satpal and Kuldeep Singh in both the petitions being workmen was as per law. Even, their earlier writ petitions filed before the High Court were dismissed. Counsel for the petitioner also submits that since, no industrial dispute arises, there was no occasion for making compliance of Section 25-F of the Act.

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5. On the other hand, learned counsel for the respondent-workmen submits that the plea of the respondents in both the cases is the same that the services of the respondents were taken on account of an emergent situation i.e. during the flood time, but he admits that on 15.07.1996 and 01.06.1995, when the respondent(s)-workmen, namely, Satpal and Kuldeep Singh were appointed respectively, there was no flood situation in the State of Haryana. Infact, the flood was there in the State of Haryana in the Month of September and it has been so observed in the impugned award also. While referring to the findings under issue No.1 recorded in paragraph No.5 of the Impugned award, there is a reference to the appointment before flood time which came on 04.09.1995. In other words, the flood period started on 04.09.1995, whereas, the appointment of the workman-Satpal was on 15.07.1995 and workman-Kuldeep Singh was on 01.06.1995. It was specifically held after examining the evidence available on record that before the termination of the workmen in both the cases, work period of 240 days in one preceding year had been completed, therefore, compliance with Section 25-F of the Act was must for Management, by whom the services of the workmen were

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obtained. In view of the observations cited above and the factum of appointment of workmen prior to the flood period, the plea of the respondent-workmen is more tenable, on the face of it.

6. Therefore, this Court does not find it tenable to deviate from the findings given by the Industrial Tribunal-cum-Labour Court in response to both the references forwarded by the learned State Government under Section 10 (1) (C) of the Act. Thus, findings recorded in regard to the holding of termination order as illegal is upheld and it is also affirmed that provisions of Section 25-F of the Act have not been complied with and thus, termination of the workmen is against the law.

7. However, before parting with the judgment, this Court has taken note of the fact that vide order dated 24.02.2001, operation of the impugned award was stayed by this Court subject to the compliance of Section 17-B of the Act. This Court is informed that both the respondents-workmen have been receiving the amount of last pay drawn since the time the stay order was passed by this Court i.e. from 24.02.2001. Meaning thereby, in the last about 28 years, respondent(s) were never reinstated by the Management as there was a

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stay order and were receiving the amount as paid under Section 17-B of the Act. The Court is also informed that workman-Satpal in CWP-2674 of 2001 has already attained the age of superannuation. It is also not in dispute that workmen in both the cases worked in the year 1995 to 1996 for about a year only, and for the last about 28 years none of them have been in service with the petitioner-Management.

Thus, this Court is of the view that instead of extending all the benefits as ordered by learned Labour Court, as on date, some lump sum compensation can be granted. On that account, counsel appearing on behalf of the respondent-workmen in both cases relied upon the Judgment of Hon'ble Apex Court titled as '**B.S.N.L. Vs. Bhurumal', 2014 AIR (Supreme Court)1188, Law Finder Doc Id # 507761**' and referred to paragraphs No. 24, 25 and 26, whereby workman was ordered to be paid a lump sum compensation of Rs.3 lacs on account of the fact that for the last 15 years he was out of the service.

For the sake of convenience, paragraphs No. 24, 25 and 26 are reproduced hereunder:

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'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.

25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

26. Applying the aforesaid principles, let us discuss the present case. We find that the respondent was working as

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a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent he had worked for 15 years. However, the fact remains that no direct evidence for working 15 years has been furnished by the respondent and most of his documents are relatable to two years I.e. 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement. In Man Singh (supra) which was also a case of BSNL, this Court had granted compensation of ₹ 2 Lakh to each of the workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of 3 lakhs. This compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. Award of the CGIT is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the cost of L 15,000/- (Rupees Fifteen Thousand only) in this appeal.'

Counsel for the respondent-workmen also relies upon the judgment of Division Bench titled as '**B.P.S. Mahila Vishwavidyalaya Vs. Mukesh Kumar and others'**, 2014 (12) S.C.T. 710, Law Finder Doc Id #599265 on the same ratio, Wherein subsequently, the judgment passed by Hon'ble Apex Court has also been followed by the Division Bench of this Court (Punjab and Haryana High Court),

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and a compensation amount of Rs. 3 lacs was ordered. Relevant paragraphs No. 4,5 and 6 of the said judgment reads as under:

'4. After hearing learned counsel for the parties, we are not inclined to affirm the award of the Labour Court ordering that respondent No. 1 be reinstated in service on payment of 50% back wages. It is not in dispute that respondent No. 1 was appointed by Mess Committee and the institute was not in existence. The post was not advertised. Seven workmen including the appellant were taken into service under the verbal orders passed by the then Principal of the institute. Respondent-workman was a daily wager and he had worked only for a period of 1½ year before his service was terminated. His service was terminated in the year 2007. It is not expected that during this period respondent No. 1 was sitting idle and doing nothing towards earning livelihood for his family. Counsel for the appellant has placed reliance upon a judgment of Hon'ble Supreme Court in the case of B.S. N.L. v. Bhurmal 2014(2) SLR 128 and also in the case of Assistant Engineer, Rajasthan Development Corporation and another v. Gitam Singh (2013) 5 SCC 136: ININD 2013 SC 390: 2013-11- LJ-141, to say that in such like a situation, payment of compensation is a proper remedy. But the Labour Court and the learned Single Judge ordered reinstatement of service of the appellant.

5. We are satisfied with the arguments raised by learned counsel for respondent-workman. In the above said judgments, Hon'ble Supreme Court has specifically opined that in the case of daily wager unless the termination is proved to be mala fide, result of unfair labour practice, reinstatement is not only the remedy. Rights of the parties can be settled by ordering payment of compensation in favour of the workman whose service

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was terminated without complying with the provisions of Section 25F of The Act.

6. *In view of above, these appeals are partly allowed and it is ordered that instead of reinstatement in service, let the compensation amount of 3.00 lacs each be paid to the respondents-workmen. The mount shall be paid within a period of two months, from today, falling which, respondents-workmen hall be entitled to claim interest @ 8% per annum simple, till such time payment is not made to them.*

Appeals partly allowed. '

8. Thus, taking note of the referred judgments, this Court is also of the view that a lump sum compensation of Rs.2.5 lacs to each of the workmen-respondents be paid by the Petitioner-management. It has been so observed by taking note of the fact that after the gap of 28 years, respondents-workmen should not be thrust upon the employer(petitioner).

Thus, with the aforementioned reasons recorded, both the present petitions are disposed of.

January 15, 2024
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Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no