

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109

CWP-8289-2024
Date of Decision:15.04.2024

AMRITSAR FOREST DIVISION AND ANR

.... Petitioner

Versus

GURWINDER KAUR AND ANR

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Brijesh, Asst. A.G., Punjab.

SANJAY VASHISTH, J.(Oral)

1. Petitioners-Amritsar Forest Division (being Management) has assailed the award dated 13.01.2023, passed by Industrial Tribunal-cum-Labour Court, Amritsar, whereby reference No. 131 of 2016 under Section 10 (1) (C) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') has been answered in favour of worklady-respondent No.1.

2. Infact, while answering the reference, learned Tribunal held that the worklady-respondent No.1 had completed her service of 240 days in preceding one year of termination. While observing so, learned Tribunal has drawn its inference for the reason that the Management failed to produce the complete record to prove its pleadings to the effect that the service of the work lady was not continuous and there were breaks in her service.

3. While agreeing with the worklady, learned Tribunal has already taken note of the fact that she served with the Management merely for two years and seven months on a daily wage basis. Services of the work lady were terminated way back in the year 04.10.2015. Therefore, learned Labour Court held that instead of reinstatement, the grouse of the work lady can be settled by granting appropriate compensation to the tune of Rs.2, 00,000/- (two lacs).

4. Finding recorded by learned Tribunal in paragraph No. 14,14, 15 is substantial one and the same is reproduced herein below:

“14. The employer-employee relationship between the parties is an admitted fact. The first and foremost question is whether the worker being daily wage is entitled to the benefit of the provisions of the I.D Act or not? The law in this regard is well settled. The judgments cited by the Ld. AR for the worker i.e. Jasmer Singh Vs State of Haryana & Anr, Civil Appeal No. 346 of 2015 decided on 13.01.2015 (S.C), K.V. Anil Mithra & Anr Vs Sree Sankaracharya University of Sanskrit & Anr, Civil Appeal No(s). 9067 of 2014 decided on 27.10.2021 (S.C), and Assistant Engineer, Rajasthan Vs Gitam Singh, Civil Appeal No. 8415 of 2009 decided on 31.01.2013 (S.C) (Supra) are clearly applicable to the facts of the present matter. In the aforesaid judgments, it is clearly laid down that even a daily wager is entitled to the protection of the provisions of the I.D Act. The only requirement for claiming above protection is that the worker must have worked for more than 240 days in the preceding 12 months from the date of termination of the service by the management. In the present matter, the worker has categorically stated that she has worked with the management from 07.01.2013 to 04.10.2015. On the other hand, the managements have pleaded that the service of the worker was not continuous and there were gaps in her service. The managements have also placed on record Muster Rolls Ex. RZ and EX, RZ/1 to Ex- RX/6. The aforesaid Muster Rolls are for the months of August 2015 (Ex. RZ), September 2015 (Ex. RZ/1), September 2014 (Ex. RZ/2), December 2014 (Ex. RZ/3), January 2015 (Ex. RZ/4), February 2015 (Ex. RZ/5) and March 2015 (Ex. RZ/6). Through aforesaid Muster Rolls, the

managements have endeavored to establish that the service of the worker was not continuous and there were breaks in her service-As far as the aforesaid contention of the managements is concerned, it is pertinent to mention here that the managements have not produced any document on the file vide which the services of the workman were terminated prior to 04.10.2015 or vide which she was re- employed by the managements. The managements have produced the documents of their choice on the judicial file. It is settled principle of law that an employer is duty bound to maintain proper record of services rendered by the employees. In cases titled as R.M. Yellatti Versus The Assistant Executive Engineer-2006 (1) Apex Court Judgments 667, the Hon'ble Apex Court has held that "the State Governments should take steps to maintain proper records of service rendered by daily wagers. The daily wager is not a person who could be thrown by the wayside on the mere whims of the management. The management had perforce to TED talk time wing maintain the records and admittedly there were muster rolls. The INER destruction of public records could not have been done without proper procedure nor could the documents pale into their air, for the reason that there was a case pending in relation to the claim of the workman.

14. *In the present case also, it was the duty of the managements to maintain proper muster rolls of the workers but the managements have produced only 6 muster rolls. In the absence of any document regarding the termination of services of the worker from 07.01.2013 to 04.10.2015, it cannot be believed that there was any gap in the service of the worker during the aforesaid period. Hence, this Tribunal is of the considered opinion that the worker had completed more than 240 days of continuous service in the preceding year with the management before the termination of her service and she is entitled to the protection of Section 25F of the ID Act. The managements have not placed-any document on file that before the termination of the service of the worker, the compliance of the provisions of Section 25F of the ID Act was made by them. Hence, in the opinion of this Tribunal, the termination of the service of the worker by the management is illegal.*

15. *It is settled principle of law that right of reinstatement is not an automatic right. In case titled as "Municipal Corporation, Dina Nagar, Tehsil and District Gurdaspur V. Presiding Officer, Labor Court, Gurdaspur and another (Supra)" the Hon'ble Punjab and Haryana High Court has held that a worker 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. Further, the Hon'ble Apex Court in the case titled as Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh, (2013) 5 SCC 136, (SC) has held as under:-

29. In our view, Harjinder Singh² and Devinder Singh³ do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labor Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in Such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labor Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute.

30. We may also refer to a recent decision of this Court in Bharat Sanchar Nigam Limited v. Man Singh[24]. That was a case where the workers, who were daily wages during the year 1984-85, were terminated without following Section 25-F. The industrial dispute was raised after five years and although the Labor Court had awarded reinstatement of the workers which was not interfered by the High Court, this Court set aside the award of reinstatement and ordered payment of compensation. In paragraphs 4 and 5 (pg.559) of the Report this Court held as under:

"4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that

the respondent workers were engaged as "dally wagers" and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice."

5. This Court does not find any reason to disturb the findings given by the learned Labour Court. Thus, maintaining the same, present writ petition is hereby dismissed.

April 15, 2024

rashmi

Whether speaking/reasoned

Whether reportable?

[SANJAY VASHISTH]

JUDGE

yes/no

yes/no