



CWP-11386-2024 1

107

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11386-2024

Date of Decision: 29.10.2024

SUKHVINDER

..... Petitioner

*Versus*PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Yashveer Kharb, Advocate for
Mr. Paramjeet Singh Phor, Advocate
for the applicant-petitioner.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 22.02.2024 (Annexure P-3) whereby Industrial Tribunal-cum-Labour Court, Panipat has ordered the respondent to pay a sum of Rs.75,000/- as compensation instead of reinstatement.

2. The petitioner joined respondent as Sweeper-cum-Peon on 08.06.2009 and worked till 12.12.2017. He was a part time employee and came to be retrenched without complying with provisions of Section 25F of Industrial Disputes Act, 1947 (for short 'ID Act'). The Labour Court has concluded that petitioner worked for 240 days during 12 months preceding the date of retrenchment, thus, he could not be retrenched without complying with mandate of Section 25F of ID Act. He was retrenched without complying with Section 25F of ID Act, thus, he needs to be compensated. The Labour Court relying upon judgment of '*Bharat*



Sanchar Nigam Ltd. Vs Man Singh’, 2012 (1) SCT 641 as well as ***BSNL Vs. Bhuramal, 2014 (3) SCT 49*** has concluded that it would not be appropriate to reinstate the workman and payment of lump sum compensation of Rs.75,000/- would be justified. The relevant extracts of findings recorded by Labour Court are reproduced as below:

“In view of legal proposition discussed above, if we take a look on the evidence on record, it is evident that claimant Sukhvinder has filed his affidavit Ex.CW-1/A reiterating the stand taken in the claim petition. The cross-examination of this witness would reveal that a suggestion has been given to CW-1 Sukhvinder that it is correct that he was appointed on part time basis w.e.f. 08.06.2009. Further CW-2 Pratham Clerk O/o DFO, KKR produced the authority letter Ex.P-2 and requisitioned record Ex.P-3. CW-3 Sh. Nishu Kumar, Branch Manager SBI produced the account statement Ex.P-4 pertaining to the account number 55146528968 pertaining to claimant for the period from 01.04.2016 to 20.03.2017 and further revealed about the amount received from the O/o DFO, KKR from 01.04.2016 to 20.03.2017 and gave details that amount of Rs.4680/- was credited on 04.05.16, Rs.4680 dated 04.05.2016, Rs.4680/- dated 05.07.2016, another 4680/- 5.07.2016 Rs.4680/- dated 03.10.2016, Rs.4680/- dated 29.11.2016, Rs.4680/- dated 29.11.2016, Rs.9360/- dated 29.11.2016 and Rs. 23400/- dated 20.03.2017 (running into 1 to 12 pages) and produced the certified copy of the requisitioned record and Ex.P-1 account passbook. In addition to this, the perusal of cross-examination of RW-1 Shamsher Singh, RFO reveals that the witness has stated that claimant as per record had worked from 2013 to 2017 and the last salary drawn by claimant @ Rs.4680/- in the year 2016-17 and in December 2017 claimant got Rs.4810/-. The witness further admitted that claimant worked continuously from 01.04.2016 to 31.03.2017 continuously and the record



Ex.R-4 is correct. That Mark- 3 to Mark-8 are the documents belonging to the documents Ex.R-10. The witness stated that he did not know if any notice was given to claimant when he was removed from the job.

13. In view of above, one thing is admitted that the claimant has by way of bank statement and documentary evidence and by way of testimony of RW-1 in cross-examination has proved that he worked in the department from 01.04.16 till 31.03.2017 continuously. Perusal of Ex.P12 further goes on to show that amount of Rs.2500/- was given to claimant by the office of respondent and Ex.P-13 by which Rs.500/- were received by claimant and paid by respondent RFO CFC, Karnal further substantiates the stand of claimant. Similarly, Ex.P-14 pertains to the period October 2013 & Ex.P-15 to Ex.P-26 different payments were received by claimant for the time period for 2013-14. Hence, it is held that the claimant has been able to prove that he worked continuously for a period of 240 days prior to termination of his services by the respondents. Hence, this issue is decided in favour of the claimant.

18. In view of legal proposition discussed above, it is evident that the claimant Sukhvinder has categorically stated in affidavit Ex.WWI/A that he was appointed by the respondent on 08.06.2009 as Sweeper cum Peon on daily part time basis and had worked up to 12.12.2017 continuously. It is already held that the claimant has been able to prove that he worked continuously for a period of 240 days prior to termination of his services by the respondents. The witness RW-1 Shamsher Singh, RFO stated that he did not know if any notice was given to claimant when he was removed from the job. Therefore, it is held that respondents have violated Section 25-F of the I.D. Act



and in view of judgment of Ld. Apex Court. In **Bharat Sanchar Nigam Ltd. v. Man Singh, 2012(1) SCT 641 (supra)** it is not necessary that relief of reinstatement has to be given as a matter of right. Reliance can also be placed upon **Jagbir Singh v. Haryana State Agriculture Marketing Board, 2009(3) SCT 790 (supra)** under which it has been held that in the recent past, there had been a shift in the legal position and the Court had 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 termination of an employee was in contravention of the prescribed procedure. Compensation instead of reinstatement was held to be the prudent relief to meet the ends of justice. Claimant was appointed on part time basis only as Peon cum Sewadar. Hence, this Court proposes to Award a compensation of Rs. 75,000/- to be provided by respondents to the claimant within a period of 2 months from the date of publication of the Award, failing which respondents shall further pay interest 6% per annum from the date of Award till the date of making payment.

19. In view of my findings upon above-said issues, the claim statement dated 20.11.2019 is hereby allowed to the effect that the claimant is entitled for a compensation of Rs. 75,000/- to be provided by the respondents within a period of 2 months from the date of publication of the Award, failing which respondents shall further pay interest 6% per annum from the date of Award till the date of making payment. Copy of this Award be sent immediately to Deputy Labour Commissioner, Panipat for information and necessary action. Record of this Court be consigned to the records."



3. From the perusal of finding recorded by Labour Court, it is difficult to conclude that there is any jurisdictional error or factual infirmity in the impugned order. The respondent is an instrumentality of the State. The petitioner was never appointed after following procedure prescribed for appointment of Government employees. He was a part time employee and his last drawn salary was Rs.4810/-. In terms of Section 25F of ID Act, he was entitled to compensation of not more than Rs.25,000/-, however, Labour Court has awarded compensation of Rs.75,000/-. Any order of reinstatement would amount to regularization of a workman who was not appointed after following procedure prescribed for appointment of regular employees by State authorities. Any order of reinstatement would also be contrary to Constitution Bench Judgment in ‘*Secretary, State of Karnataka Vs. Uma Devi*’, (2006) 4 SCC 1.

4. In the wake of above discussion and findings, the impugned order does not warrant interference.

5. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

29.10.2024
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No