

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13274-2014
Decided on : 03.05.2024

The State of Punjab and others
Versus
Kamaljit and another

... Petitioner(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Manmeet Singh Teji, AAG, Punjab.

Mr. Dinesh Kumar, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. By way of present writ petition, petitioner – State of Punjab, Department of Forests & Wildlife Chandigarh through its Secretary and others, have challenged the award dated 28.10.2013 (Annexure P-6), passed by respondent No.2 – Presiding Officer, Industrial Tribunal, Jalandhar (for brevity, ‘learned Tribunal’), whereby, Reference No.869 of 2002, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (in short, ‘ID Act’), has been answered in favour of respondent No.1 – Kamaljit w/o Des Raj (work-woman).

In the award (P-6), learned Tribunal held that the termination of the work-woman is bad in law, and thus, entitled her to reinstatement on the same post with continuity of service from October 1998, with 50% back-wages from the date of demand notice.

2. Pleaded case of the work-woman is that she initially joined the service of Management as ‘labourer’ in the year 1990, and continuously

worked till 31.12.2000. On the date of termination from service, w.e.f. 01.01.2001, she was drawing wages of Rs.2035/- per month. Since, she had worked for more than 240 days in the preceding 12 months prior to her termination; the Management was required to follow the principles of the ID Act. Since, neither any notice, nor pay notice or retrenchment notice was paid to the work-woman. Thus, her termination is illegal and in violation of Section 25-F of the Act.

3. In the written statement filed by the Forest Department (Management) dual pleadings were raised i.e.; in preliminary objections, it was pleaded that Forest Department is not an 'Industry', and on merits, it was pleaded that the work-woman has worked as daily wage labourer in the Forest Nursery, Phillaur on piecemeal rates and payment of wages were made to her accordingly.

4. On the first objection raised by the Management, while relying upon the **Divisional Forest Officer vs. Jagdish and others, 2003(4) RSJ 264**, learned Tribunal held that said objection is not tenable, and already the Forest Department has been interpreted as 'Industry' under the definition of ID Act.

5. After examining the statements of the witnesses i.e. work-woman as WW1, and Management's witness – Parmod Kumar, appeared as MW1 and Sanjiv Kumar as MW2, learned Tribunal recorded its finding that the stand taken by the Management's witnesses i.e. MW1 & MW2, is inconsistent, because, as per MW1 – Parmod Kumar, work-woman joined the services in October 1998 and was terminated on 01.01.2001, whereas, as per the submission of MW2 – Sanjiv Kumar, work-woman worked from July 1994 to October 1998.

From the said inconsistent statement, learned Tribunal appears to have rightly reached to the conclusion that the factum of engagement in service by the Management is well established. However, observing that there is a violation of provisions of the ID Act, learned Tribunal held that the work-woman has proved her services with the Forest Department from October 1998 to 31.12.2000. Finding recorded by learned Tribunal, in paragraphs No.13, 14, 15 & 16 of the impugned award (P-6), are reproduced here-under:-

“13. I have taken into consideration the submissions of both the sides. According to the statement of claim, she joined as Labourer in the year 1990 and continued to work till 31.12.2000 but in her statement, she deposed that she continued to serve till 7.9.01 and her services were terminated on 8.9.01. According to MW1 Parmod Kumar, the services of the claimant were engaged in Oct., 1998 which were terminated on 1.1.01 as it was off season. MW Sanjiv Kumar deposed that the work in the Forest Department is seasonal one and there is no regular vacancy. He also deposed that the claimant is gainfully employed. In his cross examination, he denied that the claimant was employed from 1990 to 31.12.2000 and she was refused work on 1.1.01. He deposed that she was asked to return on job as per letter Ex.M2.

14. According to MW Sanjiv Kumar, the claimant has not worked from 199- to 31.12.2000 but the claimant was asked to rejoin duty. The version of both the MWs is inconsistent as MW Parmod Kumar says that claimant joined the service in Oct., 1998 and her services were terminated on 1.1.01. MW2 Sh. Sanjiv Kumar states that the claimant worked from July 1994 to Oct., 1998. He has given details of the work done by the workman Ex. M1. In this way, one thing is established on record that her services were engaged by the management.

15. Both the learned authorized representatives have pleaded their case in their own way. Sh. J.S. Perhar submitted that the plea of management that the claimant worked from April 1997 to

Oct. 1998 which is contrary to the statement of MW1 Parmod Kumar. For the sake of repetition, it is again mentioned here that according to MW1 Parmod Kumar, the claimant joined in Oct., 1998 and she was refused work on 1.1.01 as the season was over. On the basis of proceedings in the Lok Adalat dated 18.11.11, the award was passed which was however, set aside vide order dated 19.10.12. Thus, it will not be viable to take note of the proceedings of the Lok Adalat.

16 As per the available evidence, it has been evident on record that the claimant joined the service of the management in Oct., 1998 and worked till 31.12.2000. There is no evidence on the file that she worked from 1990. The demand notice is dated 10.9.01 and this case is pending since then. When the claimant worked from Oct., 1998 to 31.12.200, it was required by the management to terminate her services in accordance with the law which has not been done in this case. Therefore, the termination of services of the claimant is held illegal. There is no evidence on the file that she was gainfully employed though the plea has been taken in the written statement. This Tribunal is, however, of the view that in the era of rising prices, no person can survive without doing anything. This, this Tribunal is of the considered view that the claimant is entitled to 50% of the back wages from the date of demand notice with continuity of service. Accordingly, this issue is decided in favour of the workman and against the managements.”

6. In addition to the observation made by learned Tribunal, counsel representing respondent No.1 – work-woman, submits that the co-workers of the work-woman, namely; Smt. Bachni, Smt. Bhajno, Smt. Piaro and Smt. Shindo also, faced the similar controversy and the references under Section 10(1)(C) of the ID Act, were answered in their favour by the concerned Tribunal. While answering the references, learned Tribunal held that there is complete violation of Section 25-F of the ID Act, and thus, held

them entitled for reinstatement. However, by way of filing writ petitions i.e. **CWP No. 10002 (The State of Punjab and others vs. Smt. Bachni and another) along with CWP Nos. 10026, 10019 and 10022 of 2014** (against all the aforesaid four work-woman), before this Court, the Management (State) could not succeed, and same were dismissed by this Court, vide common order dated 07.08.2015.

However, recording the fact that the work-woman had attained the age of superannuation and they had rendered 16 years of service and remained out of job for almost 10 years, instead of maintaining the award *qua* reinstatement, the same was modified by holding them entitled to ₹6.00 lakhs each, as compensation in all the aforesaid cases.

In this regard, the finding recorded by this Court in all the four writ petitions, is reproduced here-under also:-

***“IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH***

***CWP No. 10002 of 2014
Date of decision : August 7, 2015***

The State of Punjab and others
Versus
Smt. Bachni and another
..... Petitioners
..... Respondents

CWP No. 10026 of 2014
The State of Punjab and others
Versus
Smt. Bhajno and another
..... Petitioners
..... Respondents

CWP No. 10019 of 2014
The State of Punjab and others
Versus
Smt. Piaro and another
..... Petitioners
..... Respondents

CWP No. 10022 of 2014

The State of Punjab and others

..... Petitioners

Versus

Smt. Shindo and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V. Ramswaroop, Additional Advocate General, Punjab.

Mr. Dinesh Kumar, Advocate for the respondents.

- 1. Whether reporters of local papers may be allowed to see the judgment***
- 2. To be referred to the reporters or not?***
- 3. Whether the judgment should be reported in the digest?***

Amit Rawal, J.

By this order I intend to dispose of CWP Nos. 10002,10019,10022 and 10026 of 2014 as common question of fact and law is involved in all the cases. For the sake of convenience, facts are taken from CWP No. 10002 of 2014.

The challenge in the present writ petitions is to the award dated 6.11.2012 whereby the reference raised by the respondent-workmen viz-a-viz their alleged termination and demand notice has been answered in favour of the workmen and they have been held entitled to compensation equal to three months wages for each year i.e. w.e.f. 2003 till 2012 and entitled to be reinstated on same post from which their services were terminated. As per the award the department was also directed to consider the case of the workmen during their employment from the date they joined and pass an order viz-a-viz regularization within three months from the date of passing of the award as per government guidelines.

Mr. V. Ramswaroop, Additional Advocate General, Punjab Submits that the Labour Court in granting the said relief committed illegality and perversity, the demand notice was served in the year 2003 and their services were terminated in 2001. The workmen failed to discharge the onus that they completed 240 days in a relevant year and they were appointed without following the

regular procedure, therefore continuity of service and back wages could not have been given as they were having the status of daily paid workers and now the workmen have crossed the age of superannuation long time back, therefore the award is not sustainable in the eyes of law.

Learned counsel for the respondents submits that the workmen have rendered services of almost 16 years and they have faced the wrath of alleged termination for almost a decade. The award of the Labour Court is fair, legal and justified and liable to be upheld as the management while terminating the services of the workmen did not resort to the provisions of Section 25-F of the Industrial Disputes Act (hereinafter called as 'the Act'). It has further been submitted that the Management did not produce the record from March 1988 onwards and the story which was surfaced in the cross examination was that it was destroyed. The muster rolls for the year 1995 to 2000 were produced. Thus, intentionally the Management withheld the muster rolls particularly from April 1988 onwards, therefore adverse inference is liable to be drawn. Only record of five years was produced. The plea of the Management that the workmen left the job at their own has not been proved on record. Had it been so, nothing prevented the Management to issue show cause notice, charge sheet, much less enquiry. It cannot be lost sight of fact that during that period new workers had also been appointed, therefore, there is violation of provisions of Section 25-H of the Act. Since the workmen had already rendered 240 days during the period they remained in service, the relief granted by the Labour Court as aforementioned, in my view, is justified. Since all the workmen have attained the age of superannuation, I do not deem it appropriate to uphold the award viz-a-viz reinstatement. This Court while issuing notice of motion had directed the State to comply with the directions for payment of compensation for the period w.e.f.2002 to 2012 which amounted to ₹60,000/-. It has been submitted that the said amount has been deposited in the Labour Court. Two workmen i.e. in CWP No. 10002 and 10026 of 2014 the workmen have died wherein in other cases payment has been made. Since the workmen had rendered 16 years of service and they remained out of job for

almost 10 years, compensation granted by the Labour Court is liable to be enhanced. Accordingly, the workmen shall be entitled to ₹ 6 lacs each as compensation in all the cases. It is made clear that out of the awarded amount of compensation, the amount already withdrawn/taken shall be adjusted.

The award of the Labour Court is modified. Keeping in view the fact that the workmen had superannuated, the Management is directed to make payment within a period of three months from today, failing which it shall entail interest at the rate of 9% per annum.

The writ petition stand disposed of.

(AMIT RAWAL)
JUDGE

August 7, 2015”

7. Subsequently, the order dated 07.08.2015, passed by learned Single Judge of this Court, in the aforementioned writ petitions, was challenged by way of filing **LPA Nos. 750 of 2016 (O&M) (The State of Punjab and others vs. Smt. Shindo and another)** along with **LPA Nos. 751, 752 & 826 of 2016 (O&M)**, however, the same were also dismissed vide order dated 22.08.2016, by the Division Bench of this Court, on the ground of delay.

8. Since, the work-woman (respondent No.1) in the present case is stated to be co-worker/co-employee of the aforementioned work-women, in whose favour this Court had already modified the award by awarding/enhancing the amount of compensation to Rs.6.00 lakhs, I deem it appropriate to take similar view point *qua* the present work-woman also, because, she also stated to have attained the age of superannuation, and therefore, order of maintaining the award *qua* reinstatement is not going to serve any actual purpose.

As per the impugned award (P-6), the work-woman rendered her services to the Management from October 1998 to 31.12.2000 i.e. for about 2 years & 2 months. In view of these circumstances and to meet out the ends of justice, this Court deems it appropriate to grant the lump-sum amount of ₹3.50 lakhs (Rupees Three Lakhs and Fifty Thousand only), as compensation to be paid to respondent No.1 (work-woman), by the Management.

Needless to say that the said lump-sum amount of compensation would be towards all the claims awarded by learned Tribunal in the impugned award (P-6), and the work-woman shall not be entitled to claim anything else, in addition to the lump-sum amount of ₹3.50 lakhs as compensation, as ordered by this Court.

The lump-sum amount of compensation would be paid by the Management (petitioners herein) within a period of three months from today i.e. on or before 04.08.2024, failing which, petitioners – Management would be liable to pay the lump-sum amount of compensation of ₹3.50 lakhs along with interest @ 6% per annum, from 05.08.2024 onwards.

With the aforementioned modification, present writ petition stands **disposed of**.

(SANJAY VASHISTH)
JUDGE

May 03, 2024
J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~
Whether Reportable: ✓ Yes/~~No~~