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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 13.02.2024

Rajesh Kumar @ Rajesh (deceased) through LRs

... Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal,
Hisar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Sandeep Lather, Advocate
for the petitioner(s).

Mr. Rajesh Gaur, Advocate
for respondent No.2.

SANJAY VASHISTH, J. (Oral)

1. Present writ petition has been directed at the instance of the petitioner – workman against the award dated 12.03.2013 (Annexure P-12), passed by respondent No.1 – Presiding Officer, Industrial Tribunal, Hisar (in short, ‘learned Tribunal’) whereby, relief of reinstatement with continuity in service along with full back-wages, has been declined to the petitioner – workman, and instead, a lump-sum compensation has been provided.

2. Reference under Section 10(1)(C) of the Industrial Disputes Act, 1947 (in short, ‘ID Act’), has been answered partly in favour of the petitioner – workman (presently being represented through his legal representatives), by observing that the termination of service of the petitioner was in violation of the provisions of Section 25-F of the ID Act. However, without order for reinstatement, lump-sum amount of compensation i.e. Rs.1,40,000/- (Rs.1,30,000/- + Rs.10,000/-), has been awarded.

3. While referring to the letter dated 16.10.2002 (Annexure P-4), counsel for the petitioner submits through said letter, respondent – Management (Haryana Seeds Development Corporation Ltd.), had directed Manager to disengage the petitioner with immediate effect. Subsequent thereto, vide letter dated 29.10.2002 (Annexure P-5), respondent – Management withdrew the letter of disengagement. Therefore, counsel submits that undisputedly, the petitioner worked with the respondent – Management from 07.08.1987 to 01.09.2010 i.e. almost, about 13 years. Therefore, summarizing his submissions, counsel submits that awarding of the amount of the compensation as Rs.1,40,000/-, is very meager one.

4. Counsel for the petitioner further submits that once, the learned Tribunal reaches to the conclusion that there is complete violation of Section 25-F of the ID Act, and said part of the finding is never challenged by the respondent – Management, there is nothing left with the respondent – Management to agitate against the claim of the workman, or even, to say that the workman is not entitled for the relief claimed in the writ petition.

5. I have gone through the submissions addressed before this Court as well as the reasons recorded by learned Tribunal in the impugned award. This Court is of the view that in the writ jurisdiction, under Article 226 of the Constitution of India, only error of law, if curable, can be examined, and not the error of fact. Said observation is supported with the judgment of the Hon'ble Apex Court rendered in ***Syed Yakoob v. K.S. Radhakrishnan; 1964 (AIR) Supreme Court 477 : Law Finder Doc Id #81222.***

6. Moreover, there being no challenge to the award dated 12.03.2013, at the instance of the respondent – Management, there is

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no point in reopening the findings recorded by learned Tribunal. Therefore, the only issue pending adjudication before this Court is whether the compensation amount of Rs.1,40,000/- (Rs.1,30,000/- + Rs.10,000/-) reasonable or not ?

7. Undoubtedly, considering the length of the service, of about 13 years, rendered by the workman during his lifetime, would be a guiding factor for deciding the lump-sum amount of compensation, or considering its enhancement.

8. This Court is guided with the judgment passed by the Hon'ble 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**, wherein, the Hon'ble Division Bench of this Court, held as under:-

" Faced with the situation, counsel for the appellant, by placing reliance upon judgment of the Supreme Court in 'B.S.N.L. v. Bhurumal' Civil Appeal No. 10957 of 2013, decided on 11.12.2013, argued that the Labour Court was not justified in ordering reinstatement in service of the respondent-workman and payment of full back wages. Rather compensation should have been awarded. It is further stated that as on today, in the office, where the respondent-workman had been working, the work is not available for her. To strengthen above said argument, reliance has been placed upon the following passage in the judgment referred to above :-

"23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour

practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

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 25-F 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 regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization 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 violation of the principle of last come first go viz. While retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized 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.”*

In the judgment, it was specifically stated that except in cases where workman was terminated with mala fide intention, on account of indulging in unfair labour practice, and in derogation to the provision of

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'last come first go', the compensation is the remedy, that ought to be granted to the workman if services were terminated without complying with the provisions of Section 25 F of the Act.

Same is the situation in this case. There is nothing on record to show that there was any mala fide in action of the appellant to terminate service of the respondent-workman. Her services were terminated on account of shifting of the office. As the appellant's Department has failed to comply with the provisions of Section 25 F of the Act, if not reinstatement in service and full back wages, in terms of the Supreme Court case, at least she is entitled to get compensation.

The compensation is assessed. The workman continued to work for a period of more than 12 years. She is fighting this litigation for the last more than 3 decades. Under the circumstances, ends of justice would meet by granting her compensation of ₹3 lakhs. She also be entitled to get simple interest @ 10% P.A. from the date of passing of this order.

Amount so assessed be paid to the respondent-workman within 3 months from today, failing which, she will be entitled to claim compound interest @ 15% P.A."

9. By applying the principle of the aforesaid judgment and the fact that the question of reinstatement and the back-wages are not required to be adjudicated, more for the reason that the workman has expired, and he is survived by his four legal heirs/legal representatives, and had rendered about 13 years of service, this Court deems it appropriate to assess the adequate amount of compensation, as Rs.2.00 lakhs, over and above, what has been ordered by learned Tribunal.

Since the learned Tribunal neither passed the order of reinstatement nor paid the amount towards back-wages, this Court

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deems it appropriate to direct the respondent – Management to pay the amount of Rs.2.00 lakhs more, in addition to the amount already ordered by learned Tribunal, in the award dated 12.03.2013 (P-12). It is also ordered that enhanced amount of compensation would be paid to the petitioners/legal heirs along with interest @ 6% per annum, from the date of his termination i.e. 01.09.2010 till its actual realization.

In view of above, the award dated 12.03.2013 (P-12) is modified to above extent and present writ petition is partly allowed.

Writ petition stands **disposed of**, in the above terms.

(SANJAY VASHISTH)
JUDGE

February 13, 2024

J.Ram

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

Whether Reportable: ~~Yes~~/No ✓