



(107)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-1473-2024 (O&M)

Date of decision:- 01.07.2024

Joginder Singh

...Appellant(s)

Versus

Presiding Officer, Industrial Tribunal, Patiala, Punjab and others

...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE**
HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Varun Veer Chauhan, Advocate,
for the appellant.

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G.S. SANDHAWALIA, A.C.J. (ORAL)

CM-3461-LPA-2024

For the reasons mentioned therein, the delay of 96 days in filing the appeal is condoned.

The application stands disposed of.

LPA-1473-2024

1. The consideration in the present appeal is to the order dated 28.11.2023 passed by the learned Single Judge, whereby CWP-16607-2014 was disposed of by modifying the Award of the Industrial Tribunal, Patiala dated 02.06.2014 (Annexure P-1).

2. The learned Single Judge enhanced the compensation amount from Rs. 16,000/- to Rs. 1,50,000/- keeping in view the fact that the services of the appellant-writ petitioner were terminated on 29.04.2008 i.e. almost 15 years back. In case of failure on the part of the authorities to pay the aforesaid amount to the appellant-writ petitioner within a period of three



months, he was entitled to simple interest at the rate of 6% per annum from the date of expiry of the stipulated period till such time the payment was made. The learned Single Judge while keeping in mind the fact that the appellant-writ petitioner had worked from August, 2005 to March, 2008 and was not a regular employee and that his services had been terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 had granted the enhanced compensation by referring to the judgements of the Apex Court in ***Mahboob Deepak Vs Nagar Panchayat, Gjraula*** (2008) 1 SCC 575; ***Sita Ram Vs Moti Lal Nehru Farmers Training Institute*** (2008) 5 SCC 75 and ***GDA Vs Ashok Kumar*** (2008) 4 SCC 261. Apart from the said judgements, reference was also made to the judgements of the Apex Court in ***Incharge Officer Vs Shankar Shetty*** (2010) 9 SCC 126 and ***BSNL Vs Bhurumal***, 2014(3) SCT 49 to rely upon the principle that re-instatement with full back-wages is not automatic and the workman should be given monetary compensation in the interest of justice.

3. Counsel for the appellant has relied upon the judgement of the Apex Court in ***Harjinder Singh Vs Punjab State Warehousing Corporation***, 2010(3) SCC 192 to claim re-instatement being not satisfied with the enhancement of compensation by the learned Single Judge. It is submitted that the Apex Court in the said judgement had specifically said that keeping in view the provisions of the Constitution as such as well as that of the Industrial Disputes Act, 1947, re-instatement be granted as such once the retrenchment had been found to be illegal. It is, however, a matter of record that the Apex Court in ***Jagbir Singh Vs Haryana State Agricultural Marketing Board*** (2009) 15 SCC 327 had laid down the principle that a daily wager who had worked intermittently about 25 years back was only entitled for compensation and not re-instatement. The Apex Court in ***Assistant Engineer, Rajasthan***



Development Corporation and another Vs Gitam Singh (2013) 5 SCC 136 had also examined the judgement in ***Harjinder Singh's*** case (supra) which is being relied upon by learned counsel for the appellant and also another judgement in ***Devinder Singh Vs Municipal Council, Sanaur***, (2011) 6 SCC 584 by holding that it is not an absolute principle of law as such. The said judgements were distinguished by the Apex Court itself and the relevant part reads as under:-

“27. We shall now consider two decisions of this Court in Harjinder Singh and Devinder Singh upon which heavy reliance has been placed by the learned counsel for the respondent. In Harjinder Singh, this Court did interfere with the order of the High Court which awarded compensation to the workman by modifying the award of reinstatement passed by the Labour Court. However, on close scrutiny of facts it transpires that that was a case where a workman was initially employed by Punjab State Warehousing Corporation as work-charge motor mate but after few months he was appointed as work munshi in the regular pay-scale for three months. His service was extended from time to time and later on by one month's notice given by the Managing Director of the Corporation his service was brought to end on 05.07.1988. The workman challenged the implementation of the notice in a writ petition and by an interim order the High Court stayed the implementation of that notice but later on the writ petition was withdrawn with liberty to the workman to avail his remedy under the ID Act. After two months, the Managing Director of the Corporation issued notice dated 26.11.1992 for retrenchment of the workman along with few others by giving them one month's pay and allowances in lieu of notice as per the requirement of Section 25-F(a) of the ID Act. On industrial dispute being raised, the Labour Court found that there was compliance of Section 25-F but it was found that the termination was violative of Section 25-G of the ID Act and, accordingly, Labour Court passed an award for reinstatement of the workman with 50 per cent back wages. The Single Judge of that High Court did not approve the award of reinstatement on the premise that the initial appointment of the workman was not in consonance with the statutory regulations and Articles 14 and 16 of the Constitution and accordingly, substituted the award of reinstatement with 50 per cent back wages by directing that the workman shall be paid a sum of L 87,582/- by way of compensation. It is this order of the Single Judge that was set aside by this Court and order of the Labour Court restored. We are afraid the facts in Harjinder Singh are quite distinct. That was not a case of a daily-rated worker. It was held that Single Judge



was wrong in entertaining an unfounded plea that workman was employed in violation of Articles 14 and 16. Harjinder Singh turned on its own facts and is not applicable to the facts of the present case at all.

28. In Devinder Singh, the workman was engaged by Municipal Council, Sanaur on 01.08.1994 for doing the work of clerical nature. He continued in service till 29.09.1996. His service was discontinued with effect from 30.09.1996 in violation of Section 25-F of ID Act. On industrial dispute being referred for adjudication, the Labour Court held that the workman had worked for more than 240 days in a calendar year preceding the termination of his service and his service was terminated without complying with the provisions of Section 25-F. Accordingly, Labour Court passed an award for reinstatement of the workman but without back wages. Upon challenge being laid to the award of the Labour Court, the Division Bench set aside the order of the Labour Court by holding that Labour Court should not have ordered reinstatement of the workman because his appointment was contrary to the Recruitment Rules and Articles 14 and 16 of the Constitution. In the appeal before this Court from the order of the Division Bench, this Court held that the High Court had neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the award was vitiated by an error of law apparent on the face of the record and notwithstanding these the High Court set aside the direction given by the Labour Court for reinstatement of the workman by assuming that his initial appointment was contrary to law. The approach of the High Court was found to be erroneous by this Court. This Court, accordingly, set aside the order of the High Court and restored the award of the Labour Court. In Devinder Singh, the Court had not dealt with the question about the consequential relief to be granted to the workman whose termination was held to be illegal being in violation of Section 25-F.

29. In our view, Harjinder Singh and Devinder Singh 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 Labour 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 Labour 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.”

4. Resultantly, the principle as such which has been followed regarding the issue for grant of compensation instead of re-instatement was reiterated by the Apex Court while referring to ***Bharat Sanchar Nigam Ltd. Vs Man Singh*** (2012) 1 SCC 558. The said view has further been followed in ***Bhurumal’s*** case (supra) which the learned Single Judge has also relied upon. Thus, keeping in view the fact that the appointment of the appellant-writ petitioner on the Seed Farm, Nabha as such was not on regular basis way-back in 2005, the learned Single Judge had rightly granted the compensation and not directed re-instatement which the appellant-writ petitioner is now agitating.

5. The principle of law having been settled and the work period being under three years and the retrenchment being made way-back in 2008, we are of the considered opinion that at this point of time the relief claimed as such by the appellant-writ petitioner is not tenable and the view taken by the learned Single Judge is on the basis of the settled principle of law.

6. In view of the above, we do not find any plausible reason as such to entertain the present appeal which is accordingly dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(VIKAS BAHL)
JUDGE

01.07.2024
Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No