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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-21266-2015
Date of Decision: 04.01.2024

Harbhajan Singh

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal and Labour Court,
U.T. Chandigarh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. R.K. Arora, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

1. Petitioner (Harbhajan Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of Certiorari for quashing the impugned award dated 01.04.2015 (Annexure P-4), whereby, the petitioner was declined the relief of reinstatement in service and other consequential benefits and only a sum

of Rs. 50,000/- was awarded as compensation.

A further prayer has been made for directing respondent No.2- Superintending Engineer, Punjab Public Health Circle (now Punjab Water Supply and Sanitation Circle) to reinstate the petitioner in service with other consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh. In the claim petition, the petitioner stated that he was appointed by the respondent-Management as helper on muster rolls in the year 1994 in the A.C. Plant installed in the Mini Secretariat, Sector 19, Chandigarh. Petitioner claimed that he remained in an uninterrupted employment up to 05.06.2010. Petitioner stated that he was entitled for regularization and even his juniors were regularized in service, however, instead of regularization of services of the petitioner, he was transferred to a contractor with effect from 01.05.2010 and subsequently, his services were terminated on 06.06.2010. Petitioner claimed that the termination of his services amounted to retrenchment and the same was done in violation of the provisions of Section 25-F of the Industrial Disputes Act 1947 (hereinafter "1947 Act"), accordingly, prayer was made for reinstating the petitioner with all consequential benefits.

3. It appears that the respondent-Management did not appear despite service and was accordingly proceeded against *ex parte*.

4. In support of his case, the petitioner-workman examined himself as AW-1 and also examine one Sh. Sukhpal Singh as AW-2.

5. The Tribunal below vide impugned award dated 01.04.2015 upon considering the material/evidence available on the record, allowed the

reference in favour of the petitioner-workman, however, considering the fact that the petitioner was not working on a regular/permanent post, the Tribunal granted the relief of lump sum compensation of Rs. 50,000/-.

6. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court.

7. Learned counsel for the petitioner has submitted that the Tribunal below has erred in law and fact in declining the relief of reinstatement with consequential benefits to the petitioner despite holding that the services of the petitioner were terminated illegally by the Management in violation of the provisions of the Industrial Disputes Act, 1947. It is submitted that once the termination of the services of the petitioner were held to be illegal, the Tribunal below should have granted the relief of reinstatement with consequential benefits to the petitioner, accordingly, it is prayed that the writ petition be allowed by modifying the award and granting the relief of reinstatement with all consequential benefits.

8. Per contra, learned State counsel has opposed the prayer made by learned counsel for the petitioner by submitting that the Tribunal below has passed a well reasoned and justified award in the peculiar facts and circumstances of the case. It is submitted that in cases where the termination of a workman is held to be in violation of the provisions of 1947 Act, even then, the grant of relief of reinstatement and other consequential benefits is not automatic and depends on many other factors like manner and method of employment, nature of employment, length of service, etc. It is submitted that it is well settled that one of the factors could also be as to whether the recruitment was affected in terms of the statutory provisions operating in the

fields (if any). Learned State counsel has also submitted that as per the case of the petitioner, he was appointed as a daily wage worker and it is well settled by now that in case of daily wagers, the relief of monetary compensation would meet the ends of justice. Learned State counsel has further submitted that as per the recent trend, the grant of relief of compensation has been found to be more appropriate and accordingly, he prayed that there is no merit in the instant Writ Petition and the same may be dismissed.

9. I have heard learned counsel for the parties and perused the paper book with their able assistance.

10. As per the petitioner's own pleaded case, he was engaged as a helper on muster rolls in the year 1994 in the A.C. Plant installed in Mini Secretariat, Sector 19, Chandigarh. Petitioner claimed that he has remained in an uninterrupted service up to 05.06.2010 when his services were terminated. Admittedly, the workman was not working on any regular/permanent post and being a daily wager, he cannot claim a right to such post. Furthermore, there is no dispute that the Management was proceeded against *ex parte* before the Tribunal below and considering the totality of circumstances, the Tribunal below has recorded a finding that the evidence led by the petitioner-workman had gone un rebutted and therefore, a finding has been returned that the services of the petitioner were terminated illegally and in violation of the provisions of the 1947 Act. The Tribunal has granted the relief of lump sum compensation of Rs. 50,000 to the petitioner.

11. Here it would be gainful to refer to the judgment rendered by the Hon'ble the Supreme Court in the case of ***B.S.N.L. Versus Bhurmal 2014(3) S.C.T. 49***, wherein it was held as under :-

“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 25F 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 25F 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 regularisation (See: State of Karnataka v. Uma Devi, (2006) 4 SCC 1). Thus when he cannot claim regularisation 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 regularised 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...*"

12. In ***Incharge Officer v. Shankar Shetty: (2010) 9 SCC 126***, the Hon'ble Apex Court held as under:-

"2. *Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.*

3. In ***Jagbir Singh v. Haryana State Agriculture Mktg..Board***, delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, ***U.P. State Brassware Corpn. Ltd. v. UdayNarain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn v. Tribhuban, Sita Ram v. MotiLal Nehru Farmers Training Institute, Jaipur***

Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchyat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14).

"7. It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has 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 the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

4. Jagbir Singh has been applied very recently in

Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated: (SCC p.777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

13. In the case of ***Assistant Engineer, Rajasthan Dev. Corpn. And another v. Gitam Singh 2013(5) Supreme Court Cases 136***, it was held that reinstatement is not a rule and it depends upon various circumstances, like nature of work, manner and method of appointment, length of service etc. In view of ratio of various judgments, grant of compensation instead of reinstatement was held to be the proper remedy.

14. When the case of the petitioner is considered in the light of the aforesaid judicial pronouncements, I am of the considered view that the relief of reinstatement and other consequential benefits have been rightly declined to the petitioner, however, I am of the view that the grant of compensation of Rs. 50,000/- to the petitioner is on the lower side.

15. Keeping in view the fact that the evidence led by the petitioner has gone unrebutted before the Tribunal and the respondent-Management has chosen not to impugn the award dated 01.04.2015 and also considering that the termination of petitioner had occurred around 13 years ago, the interest of justice would be met if the compensation awarded to the petitioner is enhanced from Rs. 50,000/- to Rs. 3,00,000/- (after adjusting Rs.50,000/- awarded by the Tribunal below, if already paid). The

respondent/Management shall be liable to pay the enhanced amount of compensation to the petitioner within a period of 3 months from the date of receipt/presentation of a certified copy of this order. In case of non-payment of the amount to the petitioner within the stipulated period, the petitioner shall be entitled to claim simple interest @ 6% per annum till such time payment is not made.

16. The instant petition is accordingly disposed of with the aforesaid modification in the impugned award passed by the Labour Court.

17. All pending miscellaneous application(s), if any, shall stand closed.

04.01.2024
Himani

(HARSH BUNGER)
JUDGE

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| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |