

CWP-17272-2017

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

253

CWP-17272-2017

Decided on : 02.04.2024

Hari Chand

. . . Petitioner(s)

Versus

Presiding Officer, Labour Court-I,  
Faridabad and another

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Anil Shukla, Advocate  
for the petitioner(s).

Mr. Satish Singla, AAG, Haryana.

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**SANJAY VASHISTH, J. (Oral)**

1. Petitioner – Hari Chand, aged 26 years, has prayed for quashing of the award dated 03.10.2016 (Annexure P-7), passed by the Industrial Tribunal-cum-Labour Court-I, Faridabad, whereby, Reference No.30/2016, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (in short, ‘Act 1947’), has been answered partially in favour of the workman (petitioner herein), after giving an observation that there is non-compliance of Section 25-F of the Act of 1947, and thus, his termination from service is illegal.

However, Learned Tribunal held that the petitioner cannot claim his reinstatement in regular service, and held him entitled for a lump-sum amount of compensation of Rs.15,000/- only.

Thus, assailing the same, petitioner – workman has filed the present writ petition for seeking his reinstatement in service on the post of ‘Mali’ in the office of respondent No.2 i.e. M/s Govt. College, Tigaon, Faridabad (Management).

2. As per the pleaded case of the workman, he joined on the post

of 'Mali' on 01.08.2008, and was terminated from service on 24.01.2012. Against the said action of termination, demand notice was served on 12.08.2015, and after the same being referred as an industrial dispute under Section 10(1)(C) of the Act 1947, workman filed his claim statement on 26.04.2016, which was replied by respondent No.2 (Management) on 17.05.2016.

3. In the written statement, management disclosed that workman was appointed on the post of 'Mali' and for which notice was issued on 27.01.2009 and interview was conducted on 30.01.2009, but no appointment letter was ever issued to the workman. However, it was admitted in the written statement that name of the petitioner was recommended by the committee and subsequently, on the basis of the letter No. 23/3-2011 SE(3) dated 02.12.2011, services of the workman were terminated on 12.12.2011, with a purpose to fill the post on contractual basis through outsourcing agency as is evident from letter No. 6/1-2011 M.E (4) dated 06.12.2011. It is further pleaded that the outsourcing agency also recommended the name of the petitioner on 15.12.2011, but workman failed to report back on duty, after the recommendation of the outsourcing agency.

4. After considering all the aspects, learned Tribunal through its award in question made an observation that there is violation of Section 25-F of the Act 1947, but since the recruitment of the petitioner is not as per rules, in view of the judgment of Hon'ble the Apex Court titled as **Secretary, State of Karnataka vs. Uma Devi and others, 2006(4) SCC 1**, workman cannot be held entitled for reinstatement in regular service. However, workman was held to be entitled for a lump-sum amount of compensation of Rs.15,000/- payable within a period of three months, from the date of publication of award and on failure of payment within the stipulated time, interest @ 9%

p.a was to be paid by the Management.

5. Learned counsel for the petitioner – workman, argues that the finding given in the award is completely untenable. He submits that the principle of **Uma Devi's case** (*supra*), would not be applicable, in the present case for two reasons;

(i) As per the written statement filed by the Management, petitioner was appointed on the post of 'Mali' after adopting the due process of law i.e. after conducting interview of the petitioner, his name was recommended by the Committee for appointment on the post of Mali; and

(ii) that the principle laid down in the judgment of **Uma Devi's case** (*supra*) cannot deny any workman, benefits/protection accruing to him through the provisions of the Act 1947.

6. It is admitted position in the present case that the workman sought his reinstatement on the basis of non-compliance of Section 25-F of the Act 1947, by the Management, but said benefit has not been extended only for the reason that granting of such claim would not be tenable in view of the principle laid down in **Uma Devi's case** (*supra*).

7. While agreeing with the submissions of the counsel for the petitioner, this Court is guided with the principle of law discussed by Hon'ble the Supreme Court in **K.V. Anil Mithra and another vs. Sree Sankaracharya University of Sanskrit and another, 2022(1) Apex Court Judgments (SC) 85 : Law Finder Doc ID #1901762**. The factual aspect in the relied case was that workman was terminated without following the provision of Section 25-F of the Act 1947. While deciding reference, learned Tribunal held that the termination is illegal, because there is violation of Section 25-F of the Act 1947, and therefore, held the termination of the workman void under the provision of the Act of 1947, and

further directed to treat the workman, as deemed to be in service with 50% back-wages, till service is validly terminated.

When the said award was assailed before the Hon'ble Single Bench of High Court of Kerala, without disturbing the finding of fact recorded by the Tribunal in its award, it held that each of the workman has completed more than 240 days of service in the preceding 12 months from the date of termination, and therefore, services were terminated without observance of Section 25-F of the Act 1947.

However, Hon'ble Single Bench set aside the award on a premise that if the order of appointment was itself not valid and not in terms of the procedure prescribed, said irregular appointments/appointees are not entitled to seek protection of the Act.

In the Appeal, Hon'ble Division Bench, maintained the order of learned Single Judge and thus, issue reached before Hon'ble the Apex Court.

Hon'ble the apex Court converted the case of **K.V. Anil Mithra and another** (*supra*) into a Civil Appeal, to delve into the question of law that whether the protection of the Act 1947, would be available or not to the workmen, who are appointed in different manner in different circumstances and whether nature of appointment would be a pre-condition for compliance of Section 25-F of the Act 1947, and also scheme of the Act 1947 or not.

8. While dealing with the same, Hon'ble the Apex Court dealt with all the different manners in which the employees/workmen are appointed such as; daily wagers, on casual basis, part time, ad-hoc, contractual and broadly decided that for the purpose of deciding the rights of the workman, for which protection has been provided under the Act 1947, manner/nature of appointment cannot be treated as a condition precedent.

While dealing with the scheme of the Act, Hon'ble the Apex Court

categorically held that the workman employed even as a daily wager or in any capacity, once completes 240 days in preceding 12 months from the alleged date of termination, can be terminated from his services only after compliance of the provision of Section 25-F of the Act 1947. Non-compliance of the provisions would render the termination *void ab-initio*.

9. Counsel for the petitioner further argues that that once, termination is held to be in violation of Section 25-F of the Act 1947, in all probability, the endeavour of the learned Labour Court should have been to order for reinstatement of the workman in service. To substantiate his argument, Counsel for the petitioner relies on the judgment of Hon'ble the Supreme Court titled as **Jeetubha Khansangji Jadeja vs. Kutchh District Panchayat, 2022(4) S.C.T. 211 : Law Finder Doc ID #2039607**, wherein reinstatement of workman was ordered after a period of 20 years from the date of his termination from service, along with continuity in service and back-wages for a period of two years. To reach to this conclusion, reliance was placed on **Hindustan Tin Works (P) Ltd. v. Employees of M/s Hindustan Tin Works Pvt. Ltd. And others, (1979) 2 SCC 80**, wherein three-judge Bench of the Hon'ble Apex Court observed that "*the relief of reinstatement with continuity in service can be granted when termination of service is found to be invalid*". Thus, illegal termination of workman would mean that right of work of the workman has been taken away by the employer illegally, in contravention or breach of the contract, depriving the workman of his earnings.

Further reliance was placed on **Bharat Sanchar Nigam Limited v. Bhurumal, 2014 (7) SCC 177**, wherein Hon'ble the Supreme Court while dealing with a situation that when the termination of a daily wager was found to be illegal on the ground that it was a result of unfair labour practice

or where the juniors are regularized and the workman, who is senior, has been terminated illegally, observed that “*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 rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

10. On the other hand, learned State counsel submits that the workman cannot claim his reinstatement, even if there is clear violation of Section 25-F of the Act 1947, because, his claim is barred in view of the Constitutional Bench judgment i.e. **Uma Devi’s case** (*supra*).

This submission is not acceptable for the simple reason that protection of rights of workman under the provisions and scheme of the Act 1947, was never the part of discussion in the aforesaid judgment.

11. Broadly, the facts and circumstances in **Uma Devi’s case** (*supra*) were entirely different, and a principle of law laid down by Hon’ble the Apex Court in particular gamut of facts cannot apply uniformly to all the service cases of the employees/workmen, whose rights have direct protection under the Act 1947. Even the object of the enactment of 1947 mandates the management/establishment to follow the provisions of the Industrial Disputes Act, 1947, before taking any action against the workman.

12. In the totality of facts and circumstances, this Court is in complete disagreement with the reasons assigned in the impugned award. Rather, by following the principle of law laid down in the aforementioned judgments i.e. **K.V. Anil Mithra’s case** (*supra*) and **Jeetubha Khansangji Jadeja’s case** (*supra*), this Court is firm in reaching to the conclusion that once, the services of the workman have been admitted by the Management, raising of plea of nature of appointment for denying the protection of the Act

CWP-17272-2017

- 7 -

1947 to the workman, is untenable and unsustainable. Thus, this Court has no hesitation to hold that the termination of the workman is illegal and in violation of Section 25-F of the Act 1947.

Another fact that cannot loose sight is that it is the admitted case of the respondents that the petitioner was appointed after being interviewed and recommended by the Committee. However, no material i.e. the rules to be followed by the Management for the purpose of filling up vacancy of 'Mali', have not been brought on record.

13. **Thus, impugned award dated 03.10.2016 (P-7) is set-aside/modified and the reference is decided in favour of the petitioner – workman. Consequently, petitioner – workman is ordered to be reinstated in service from the date of demand notice along with 50% back-wages with continuity in service.**

Needless to observe that amount of compensation of Rs.15,000/-, if already paid and received by the petitioner – workman, shall be returned to the Management along with interest @ 6% per annum, at the time of his reinstatement in service.

14. Let this direction be complied with within a period of three months from today i.e. on or before 01.07.2024.

**(SANJAY VASHISTH)  
JUDGE**

**April 02, 2024**

*J.Ram*

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

*Whether Reportable:* ✓ Yes/~~No~~