



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-17097-2018
Decided on : 18.05.2024

Deepak Kumar

. . . Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal-cum-Labour Court-III,
Faridabad and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

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

Mr. S.S. Saini, Advocate
for respondent No.2 – workman.

SANJAY VASHISTH, J. (Oral)

1. Instant writ petition has been filed by Deepak Kumar – workman, by challenging the award dated 09.04.2018 (Annexure P-3) passed by the learned Tribunal-cum-Labour Court-III, Faridabad (for brevity, ‘learned Tribunal’), whereby, reference No.R/352/16, has been answered in favour of the petitioner (workman).

2. Learned Tribunal has held that the Management i.e. M/s Sietz Technologies India Pvt. Ltd. (respondent No.2 herein), appointed the workman for a period w.e.f. 01.09.2013 to 01.03.2016, and his services were terminated illegally in violation of mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short, ‘ID Act’).

However, by noticing the statement of the Management that it is not ready to keep the workman in service as it has lost confidence in him, a lump-sum amount of compensation of Rs.75,000/- has been ordered to be



paid to the workman by the Management within a period of three months from the date of award, failing which the amount shall start earning interest @ 9% per annum from the date of award till its actual payment.

3. By filing the present writ petition, petitioner – workman prays that once, the termination from service has been held to be illegal and in violation of the mandatory provision of Section 25-F of the ID Act, resultantly petitioner – workman was entitled for reinstatement with continuity in service and back-wages, instead of lump-sum amount of compensation of meagre Rs.75,000/-.

4. Mr. Anil Shukla, Advocate, representing the petitioner – workman submits that once, respondent No.2 – Management, takes a specific plea that they never employed the petitioner – workman, rather, his services were taken through the contractor, respondent No.2 – Management was bound to prove such a plea beyond doubt.

Further submits that finding recorded by learned Tribunal is that the plea of the Management that the petitioner was appointed on contract, is camouflaged and in fact, the workman was appointed by respondent No.2 – Management, and continuously worked from 01.09.2013 till 01.03.2016.

5. Mr. Shukla, Advocate for the petitioner – workman, while referring to the written statement filed by respondent No.2 – Management, submits that the plea of the Management is that there is no relationship of ‘employer and employee’; therefore, there cannot be any reason to say that the Management has lost confidence in the workman. Therefore, counsel submits that he be reinstated in service with its continuity and complete back-wages w.e.f. 01.09.2013.

6. On the other hand, Mr. S.S. Saini, Advocate, representing



respondent No.2 – Management, submits that the finding recorded by the learned Tribunal is incorrect, whereby, it has been held that the workman is actually the employee under the Management. However, to avoid litigation with the workman, said award has not been challenged by it. Therefore, counsel for respondent No.2 – Management submits that the compensation amount, whatever, has been awarded by the learned Tribunal, is sufficient to meet out the true justice, and also informs that the amount of compensation ordered by learned Tribunal has already been paid to the workman in the presence of the Labour Inspector.

7. I have heard learned counsel for the parties and also gone through the pleadings in the writ petition and other appended documents including; copy of the of the impugned award.

8. There is no dispute that the impugned award (P-3) sought to be modified by the petitioner – workman, has never been challenged by respondent No.2 – Management. Therefore, the finding recorded by the learned Tribunal to the extent that the termination of the workman from service is illegal and in violation of mandatory provision of Section 25-F of the ID Act, is hereby affirmed.

9. While narrowing down the issue involved in the present writ petition, it is necessary to examine whether the petitioner – workman deserves reinstatement in service or the mandatory relief awarded by the learned Tribunal in the shape of compensation, requires to be modified further.

10. For the said purpose, this Court is guided by the judgment of the Hon'ble Apex Court rendered on **11.12.2013** in **B.S.N.L. vs. Bhurumal**, **AIR 2014 SC 1188**. In the said case, Hon'ble Apex Court dealt with the



situation where the workman working on daily wage basis, for the period of 15 years service, though unproved, was awarded a lump-sum amount of compensation of Rs.3.00 lakhs in the year 2012.

Relevant findings recorded by Hon'ble Apex Court, in paragraph Nos. 19 to 26 in **Bhurumal's case (supra)**, are reproduced here-under:-

“19. The only question that survives for consideration is as to whether the relief of reinstatement with full back wages was rightly granted by the CGIT.

20. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL vs. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In the case of Incharge Officer & Anr. vs. Shankar Shetty, it was held that those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2- 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In this judgment of Shankar Shetty (supra), this trend was reiterated by referring to various judgments, as is clear from the following discussion.

“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.

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. Uday Narain 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.Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v.Nagar Panchyat, Gajraula and stated as follows:



“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.

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.” Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal, wherein this Court stated:

“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.”

21. *In the case of Telecom District Manager v. Keshab Deb the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months’ pay in lieu of one month’s notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted /given a temporary status. Such a scheme has been held to be unconstitutional by this Court in A.Umarani v. Registrar, Coop. Societies and Secy., State of Karnataka*



v. Umadevi.

22. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of this Court in the case of *Coal India Ltd. Vs. Ananta Saha and Metropolitan Transport Corporation v. V.Venkatesan*.

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.

26. Applying the aforesaid principles, let us discuss the present case. We find that the respondent was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent he had worked for 15 years. However, the fact remains that no direct evidence for working 15 years has been furnished by the respondent and most of his documents are relatable to two years i.e. 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement. In Man Singh (supra) which was also a case of BSNL, this Court had granted compensation of Rs.2 Lakh to each of the workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs. 3 lakhs. This compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. Award of the CGIT is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the cost of Rs.15,000/-(Rupees Fifteen Thousand only) in this appeal.”

11. While noticing the facts pleaded by the workman in the present case, it is found that he was appointed as labourer by the Management on 01.08.2013, and on 24.09.2015, while loading the trolley in the lift, its rope



suddenly broke, injuring his left leg. However, after recovering from the said injury, when he appeared before the management along with the fitness certificate, the Management refused to take him back on duty and terminated his services. Workman was employed on monthly wage basis and was drawing a salary of Rs.5,810/- per month, at the time of termination.

On the other hand, stand of the respondent – Management is that he was not even their employee. Therefore, relationship of ‘employer and employee’ was denied.

12. Learned Tribunal has already recorded the finding that stand taken by the Management that it had taken services of the workman from the contractor, is nothing, but a camouflage.

13. Examining all the aspects, it is found that the workman was not appointed on daily wage basis, but was on monthly basis, at a monthly salary of Rs.5,810/- and worked for a period of about 03 years. Therefore, by noticing the fact that respondent No.2 – Management is not happy in taking back the petitioner – workman, he stayed in the company of respondent No.2 – Management, only up-till the year 2016 only, it would not be just and appropriate to thrust the employee upon the Management, especially against the wish of it after a period of more than 08 years. Thus, principle of ***Bhurumal's case (supra)*** is required to be followed, by ordering for payment of some lump-sum amount of compensation.

For unproved service of 15 years on daily wage basis, Hon'ble Apex Court in ***Bhurumal's case (supra)***, awarded the compensation of Rs.3.00 lakhs, whereas, the petitioner – workman in the present case, was being paid wages as Rs.5810/- p.m. The view taken by the Hon'ble Apex Court is now more than 13 years old and by taking into consideration the



practical view of the ongoing inflation, I hereby deem it appropriate to award the lump-sum amount of compensation of ₹3,00,000/- (₹ Three Lakhs only), payable to the petitioner – workman by respondent No.2 – Management, within a period of three months from today i.e. on or before 19.08.2024, failing which, respondent No.2 – Management would be liable to pay the lump-sum amount of compensation of ₹3,00,000/- (₹ Three Lakhs only) along with interest @ 6% per annum, from the date of the today's order i.e. 18.05.2024.

It is, however, clarified that the aforesaid lump-sum amount of compensation is towards all the relief, as claimed by the petitioner – workman, through demand notice/claim statement. In other words, petitioner – workman would not be entitled for any other relief of any kind.

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

(SANJAY VASHISTH)
JUDGE

May 18, 2024

J.Ram

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

Whether Reportable: ✓ Yes/~~No~~