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

CWP-24745-2015

Date of Decision:02.08.2024

SOMBIR

..... Petitioner

Versus

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL CUM LABOUR
COURT HISAR AND ORS**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Lajpat Sharma, Advocate
for the petitioner.

Ms. Harsh Rekha Kapoor, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of impugned award dated 10.09.2015 (Annexure P-6) whereby his claim for reinstatement with continuity of service has been rejected.

2. On 21.09.1997, the petitioner joined respondent No.3 (hereinafter called as 'respondent') as Cook Helper on daily wages. His services came to be terminated on 21.09.1998. On his request a reference was made to Labour Court which vide award dated 25.03.2004 set aside order of termination and ordered to reinstate him. On 03.03.2005, he re-joined respondent. He was again terminated vide letter dated 31.03.2007. He was paid retrenchment compensation. A sum of ₹10816/- was paid as salary for the period from 01.03.2006 to 31.03.2007, ₹832/- as one month advance salary and ₹1820/- as compensation for the period from

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21.09.1998 to 31.03.2007. On his application, matter second time was referred to Labour Court as reference No.74 of 2014. The Labour Court by impugned order dated 10.09.2015 (Annexure P-6) answered the reference against the workman.

3. Mr. Lajpat Sharma, counsel for the petitioner submits that petitioner towards retrenchment compensation was entitled to ₹3328/- whereas he was paid ₹1820/-. He was paid total sum of ₹13468/- under different headings. Under heading compensation, he was actually entitled to ₹3328/- whereas he was paid ₹1820/-. As there was short payment of compensation, there was non-compliance of mandate of Section 25F and 25FF of Industrial Disputes Act, 1947 (for short '1947 Act'). The Labour Court has committed error while answering reference against the workman.

4. Ms. Harsh Rekha Kapoor, AAG, Haryana submits that indubitably a sum of ₹13468/- was paid at the time of retrenchment to workman. The petitioner is not disputing payment of wages for the period from 01.03.2006 to 31.03.2007. He is not further disputing advance payment of wages of one month. He is only disputing quantum of compensation paid for the period from 21.09.1998 to 31.03.2007. There may be some calculation error and it cannot be called as non-compliance of Section 25F of 1947 Act. The calculation of compensation was submitted by counsel for the workman, thus, Management cannot be blamed.

5. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

6. Mr. Lajpat Sharma, counsel for the petitioner is right while



arguing that Section 25F and 25FF are mandatory provisions. The Management is bound to comply with mandate of aforesaid provisions. No workman can be retrenched without compliance of aforesaid provisions. He has placed reliance upon judgments of this Court in '**Jitesh Kumar Vs. The Presiding Officer, Labour Court, Ambala and others**', 2015 (1) SCT 742 and '**Angrejo Devi Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another**', 2015 (2) SCT 213. In both the judgments courts have held that provisions of Section 25 F and Section 25FF of 1947 Act are mandatory in nature.

7. The Tribunal has adverted with submissions of petitioner. The relevant extracts of the finding recorded by Tribunal are reproduced below:

"12. The main question which arises for determination is as to whether while terminating the services of the petitioner provisions contained under Section 25-F of the Act were complied with or not. The answer to this question is in positive. Reason for the same is that Sh. Satbir Singh Siwach, MW1 in his cross-examination has specifically deposed that as per record Ex. W2 at page 7 compensation was given from 21.09.1998 to 31.03.2007 to petitioner Sombir. He has further deposed that petitioner Sombir had already filed a case against the department for regularization of his services which is pending before the Hon'ble High Court and the services of the petitioner were terminated after obtaining the approval of the department vide Mark-A.

13. From the facts placed on record and evidence led by both the parties, it comes out that the services of the petitioner were rightly terminated by the respondents on the instructions of the Director, Sports vide letter dated 21.03.2007(Mark-A). Not only that the petitioner has



received the compensation from the answering respondent under Section 25-F of the Act on 31.03.2007 consequent upon the award given in the reference No. 36 of 2002. Rupees 23052/-and Rs. 13,4687- already stands paid to the petitioner as 25% back wages from the date of demand notice i.e. from 21.09.1998 to 25.03.2004 and w.e.f. 26.03.2004 to 28.02.2005 vide Ex. W2 page 7 & 8 and this calculation was done by the Ld. AR of the petitioner. It is further pertinent to mention here that the petitioner has also filed a case against the department for regularization which is pending before the Hon'ble High Court.

14. The argument raised by the Ld. AR for the petitioner that junior employees to the petitioner are still working in the department bears no merit. Reason for the same is that no junior is working in the department except the persons who are working only on the orders of Hon ble High Court and the orders of Labour Court, Hisar.

15. In view of the facts discussed above, it comes out that the claim statement filed by the petitioner has been filed just to take undue benefit of getting the job in the department, moreover the retrenchment compensation already stands paid to the petitioner by the respondent. Therefore, he is not entitled to any relief. Hence, this issue is decided against the petitioner.”

8. From the perusal of record, it comes out that respondent while retrenching the petitioner had paid a sum of ₹13,468/-. The payment was made under three different heads. The petitioner is not disputing payment under two heads, however, he is disputing payment under third head i.e. compensation. As per him, actual amount comes to ₹3328/- whereas as per Management it was ₹1,820/-. The calculation error, if any, cannot entail non-compliance of mandatory provisions. The Management has complied with mandate of Section 25F of 1947 Act and

there is a minor calculation error, if any, which is further not accepted by Management. If a small amount has not been paid on account of calculation error, it cannot entail vitiating the entire process of retrenchment. The petitioner is also claiming regularization of service and for the said purpose, he had filed a separate petition i.e. CWP No.19380 of 2005, thus, this question is not required to be answered.

9. In the wake of above discussion and findings, this Court finds that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

02.08.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>