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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-5971-2013
Date of Decision: 05.01.2024

Roshan Lal @ Billu Ram

..... Petitioner

Versus

The Presiding Officer, Labour Court, Ambala and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rahul Jain, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER J.

1. Petitioner (Roshan Lal @ Billu Ram) 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 impugned award dated 06.08.2010 (Annexure P-1), whereby, the reference of the industrial dispute raised by the petitioner-workman has been answered against him and his claim has been dismissed.

A further prayer has been made for directing respondent

No.2 to reinstate the petitioner in service with other consequential benefits.

2. Briefly, the petitioner-workman raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Labour Court, Ambala. In the claim petition, the petitioner stated that in January, 1993, he was employed as a daily wager under the respondent-Department i.e. Divisional Forest Officer, Morni-Pinjore, Forest Division, Pinjore, Panchkula (hereinafter “respondent-Management”) and he worked continuously in different nurseries under various guards. Petitioner claimed that his services were terminated on 08.07.2004 in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short “the 1947 Act”); by adopting unfair labor practice, accordingly, petitioner prayed that he should be reinstated in service with all consequential benefits.

3. The aforesaid claim of the petitioner-workman was contested by the respondent-Management by submitting its reply, wherein it was stated that the petitioner was never appointed as a daily wager, accordingly, there was no question of terminating his services. It was submitted that the work of forestry was seasonal and the muster rolls of the daily wagers are maintained in the Department regularly. It was stated that the petitioner had worked only 30 days in August, 2001 and had been paid accordingly and prayer for dismissal of the claim petition was made.

4. From the pleadings of both the parties, the following issues were framed:-

“1. Whether the termination of services of the workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to be reinstated in service with full back wages and all the

benefits including the continuity of service? OPW

2. *Whether the workman has locus-standi to file the present claim statement?*

3. *Whether the claim statement is not maintainable in the present form? OPM*

4. *Whether the workman has no cause of action to file the present claim statement? OPM*

5. *Relief.”*

5. The parties led their respective evidence in support of their case.

6. Upon considering the material/evidence available on the record, the Tribunal below vide the impugned award dated 06.08.2010 (Annexure P-1) held that the petitioner-workman had worked for more than 240 days with respondent-Management during the relevant period, however, the Tribunal below while relying upon a judgment passed by the Hon'ble Supreme Court in the case of **Gangadhar Pilai vs. Siemens Ltd. 2007 (1) SCC 533**, held that the petitioner cannot claim the right of reinstatement along with consequential benefits, accordingly, the claim of the petitioner was rejected.

7. Being dissatisfied with the aforesaid award dated 06.08.2010 (Annexure P-1), the petitioner has filed the instant Writ Petition before this Court.

8. Learned counsel for the petitioner has submitted that the Tribunal below has erred in law and fact in rejecting the claim of the petitioner despite holding that the petitioner has worked for more than 240 days during the relevant period. It is submitted that learned Tribunal below has wrongly placed reliance upon the judgment rendered in the case of **Gangadhar Pilai (Supra)**, which was not applicable to the facts of this case.

Accordingly, petitioner submits that the impugned award be quashed and necessary relief be granted to the petitioner in view of the finding that the petitioner has worked for more than 240 days during the relevant period.

9. Per contra, learned State counsel appearing for the respondent-Management 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 which does not call for any interference by this Court. It is submitted that the petitioner was never appointed against a regular vacant post and therefore, the Tribunal below has rightly rejected the claim of the petitioner. While referring to the written statement filed in this case, learned State counsel has submitted that the Tribunal below has wrongly held that the petitioner has completed 240 days, whereas, he had not worked for 240 days in a calendar year, accordingly, prayer for dismissal of the instant Writ Petition has been made.

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

11. In the instant case, the petitioner had raised an industrial dispute regarding termination of his services by submitting that the same was in violation of the provisions of Section 25-F of the 1947 Act. The Tribunal below has returned a finding in para 19 of the impugned award that the petitioner had worked for more than 240 days with the respondent-Management during the relevant period. The petitioner has not been granted any relief by the Tribunal by placing reliance upon the judgment rendered in the case of ***Gangadhar Pilai (Supra)***.

12. I have gone through the aforesaid judgment rendered in the case of ***Gangadhar Pilai (Supra)*** wherein, the case of the appellant therein

(Gangadhar) was that he had been regularly working in various projects of the respondent therein and the services of his juniors were regularized and despite the fact that in many years he had worked for 240 days, he used to be appointed for temporary period, accordingly, he contended that the very fact that he had worked continuously since 1978 is itself an indicator to the fact that the job was perennial in nature. A perusal of the aforesaid judgment would indicate that Gangadhar Pilai was appointed for specified period on temporary basis for the duration of the project/site work and on completion thereof, his services used to be terminated and came to an end on 10.05.2000 and he filed a complaint petition before the Industrial Tribunal contending that the Management had resorted to unfair labour practice within the meaning of item No.6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

Considering the facts of that case, the Industrial Tribunal returned the finding that the engagement of Mr. Gangadhar Pilai was for specified period and it was observed that there was no question for giving any direction to the Company to confer any status and privileges of permanent employee on Mr. Pilai. The said order was challenged in the Writ Petition before the High Court, however, the same was also dismissed and even the intra-Court appeal was dismissed. The Hon'ble Supreme Court in the aforesaid judgment did not differ with the findings of the High Court and the Special Leave Petition (***Civil Appeal No.4769-2006***) was dismissed.

13. Coming to the case in hand, the petitioner-workman had categorically stated that his services were terminated in violation of Section 25-F of the 1947 Act. The Tribunal below has returned a categorical finding that the workman had worked for more than 240 days with the respondent-

Management during the relevant period. In my considered view, the Tribunal below has wrongly declined relief to the petitioner by placing reliance upon the judgment in the case of ***Gangadhar Pilai (Supra)*** although in that case, there was no issue as regards Section 25-F of the 1947 Act. Once the Tribunal has returned a finding, that the petitioner-workman had worked for more than 240 days during the relevant period, accordingly, it must be held that the petitioner had rendered continuous service in terms of Section 25-B of the 1947 Act and therefore, his services could not have been terminated without complying with the provisions of Section 25-F of the 1947 Act. The respondent-Management has not shown any material to indicate that the services of the petitioner were terminated after complying with the provisions of Section 25-F of the 1947 Act.

Furthermore, even the finding returned by the Tribunal that the petitioner has worked for 240 days during the relevant period has not been challenged by the respondent-Management. In this view of the matter, it is held that the services of the petitioner were terminated in violation of the provisions of Section 25-F of the 1947 Act.

14. It is now well settled law that when services are terminated in violation of Section 25-F of the 1947 Act then, the reinstatement is not automatic and the same depends on many factors.

In ***Sita Ram v. Moti Lal Nehru Farmers Training Institute, 2008 (2) S.C.T. 660***, Hon'ble Supreme Court held:

19. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor, were required to be taken into consideration; the nature of appointment, the period of appointment, the

availability of the job etc. should weigh with the court for determination of such an issue.

*20. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be re-instated in service in cases of this nature would subserve the ends of justice. {See **Jaipur Development Authority v. Ramsahai and Anr.**, 2006(4) SCT 772 : [(2006)11 SCC 684], **Madhya Pradesh Administration v. Tribhuban**, 2007(2) SCT 738 : [2007(5) SCALE 397] and **Uttranchal Forest Development Corporation v. M.C. Joshi**, 2007(2) SCT 562 : [2007(3) SCALE 545].}*

*In **Talwara Coop. Credit & Service Society Ltd. v. Sushil***

***Kumar**, 2008 (4) S.C.T. 382, Hon'ble Supreme Court held:*

11. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power under Section 11 A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment, viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned etc., should be taken into consideration. For the purpose of grant of back wages; one of the relevant factors would indisputably be as to whether the workman had been able to discharge his burden that he had not been gainfully employed after termination of his service.

*Some of the other relevant factors in this behalf have been noticed by this Court in **G.M. Haryana Roadways v. Rudhan Singh**, 2005(3) SCT 559 : [(2005)5 SCC 591], stating :*

"8. There is no rule of thumb that in every case

where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

In the case of ***Telecom District Manager v. Keshab Deb,***

2008(4) S.C.T. 32, Hon'ble Supreme Court emphasised 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 regularised 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, 2004(4) S.C.T. 728 : (2008) 8 SCC 402*, and Secy., *State of Karnataka v. Umadevi, (200) 4 SCC 1*.

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, a consistent view has been taken that 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.

15. Since as per the own pleaded case of the petitioner, he was appointed as a daily wager and not on a regular post, accordingly, in my considered view in the peculiar facts and circumstances of this case, the interest of justice would be met if the petitioner is granted lump sum compensation of Rs. 2,00,000/-.

16. Accordingly, the instant Writ Petition is partly allowed and disposed of with a direction that the petitioner would be entitled to the lump sum compensation of Rs.2,00,000/- to be paid by respondent No.2-Department 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.

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

05.01.2024
Himani

(HARSH BUNGER)
JUDGE

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