

264

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

**CWP-23242-2019 (O&M)
Date of Decision: 05.01.2024**

The Chief Engineer, Water Supply and Sanitation Department and another

....Petitioners

Versus

Randhir Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vipin Pal Yadav, Additional A.G., Punjab
for the petitioners.

Mr. Ravi Gakhar, Advocate
for respondent No.1.

HARSH BUNGER, J.

1. Petitioners have 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 25.03.2019 (Annexure P-11) passed by the Industrial Tribunal, SAS Nagar, Mohali (herein after “the Tribunal”) whereby, the reference of industrial dispute raised by respondent No.1 (Randhir Singh) has been answered in his favour and respondent No.1 has been held entitled for reinstatement with continuity with 10% back wages from the date of termination till date with interest @ 6% per annum.

2. Briefly, respondent No.1 (Randhir Singh) raised an industrial dispute by way of filing his claim petition before the Tribunal below, wherein he pleaded that he joined the petitioner/Department on 04.07.2005

as Pump Operator at Mubarkpur, Tubewell No.3 and he worked continuously with the petitioner/Department from 04.07.2005 up to 05.07.2012, however, he was illegally terminated on 05.07.2012 and he was drawing salary of Rs.4268/- per month at the time of his termination. Respondent No.1 claimed that he had worked for more than 240 days with the petitioner/Department in each year as well as in the last calendar year and after the termination of his services, new appointments had been made by the Department and even the juniors than him have been retained. Therefore, respondent No.1 stated that his services have been terminated in violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, (hereinafter "1947 Act") accordingly, he prayed for reinstatement with continuity in service and other consequential benefits.

3. The aforesaid claim of respondent No.1-workman was contested by the petitioner/Department on the plea that there existed no relationship of employer-employee between the petitioner/Department and respondent No.1. It was stated that respondent No.1 was not covered within the definition of workman under the 1947 Act. The petitioner/Department had taken a categorical stand that the work of operation and maintenance of Water Supply Scheme, Mubarkpur, Tubewell No.3, Tehsil Dera Bassi was given on contract to various contractors from time to time on periodical basis and respondent No.1-workman might have worked with the contractors under their direct control and supervision, however, respondent No.1 was never engaged with the petitioner/Department. Another plea was taken by the petitioner/Department that respondent No.1 had got himself listed as contractor with the Department for the period 2009 to 2011 and the same was renewed from 2011 to 2013. It was stated that the petitioner/Department

had given the contract for the operation and maintenance of Water Supply Scheme, Village Mubarkpur, Tubewell No.3 to respondent No.1 (Randhir Singh) for the following period:-

- “(i) 01.02.2010 to 31.03.2010*
- (ii) 01.04.2010 to 30.06.2010*
- (iii) 01.07.2010 to 31.12.2010*
- (iv) 01.04.2011 to 30.09.2011*
- (v) 01.04.2012 to 30.06.2012”*

It was further stated that respondent No. 1-workman had received the payment from petitioner/Department on different dates for the work which he had done under the contract. The claim of respondent No.1 on merits was denied and it was stated that there was no violation of provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 and accordingly, prayer for dismissal of claim statement of the workman was made.

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

- “1. Whether their exist relationship of employer and employee between the respondent and the workman?
OPW*
- 2. If issue No.1 is proved, whether the service of the workman was terminated illegally by the respondents?
OPW*
- 3. Whether the reference is not maintainable as per preliminary objections taken by the respondents in its written statement? OPM*
- 4. Whether the workman is entitled to any relief from the respondent? OPW*
- 5. Relief.”*

5. The respondent No.1 in support of his claim examined himself as WW-1 and tendered into evidence his affidavit Ex-W1 and further submitted documents Mark-A to Mark-C and closed his evidence.

On the other hand, the petitioner/Department examined one Harpreet Singh, SDO Water Supply and Sanitation as MW1, who tendered his evidence by way of his affidavit Ex-MW1/A and proved on record photocopies of enlistment certificate (Ex-M1) and Ex-M2 (copy of enlistment certificate).

6. The Tribunal below has decided the reference in favour of respondent No.1-workman vide impugned award dated 25.03.2019.

7. In the aforementioned circumstances, the petitioner/Department has filed the instant Writ Petition before this Court.

8. Learned State counsel appearing for the petitioner/Department submits that the Tribunal below has erred in law and fact in deciding the reference in favour of respondent No.1-workman. Learned State counsel has submitted that respondent No.1-workman had failed to discharge the onus of proving that there was relationship of employer and employee between the petitioner/Department and respondent No.1/workman. It is submitted that there is no material available on the record to show that respondent No.1-workman has worked for 240 days in the preceding calendar year from the date of his termination on 05.07.2012. It is further submitted that once respondent No.1-workman had failed to prove continuous service in terms of Section 25-B of the 1947 Act, accordingly, no relief could have been granted to respondent No.1 for the violation of Section 25-F of the 1947 Act. It is accordingly submitted that the impugned award is unsustainable in the eyes of the law and the same be set aside.

9. Per contra, learned counsel appearing for respondent No.1 has opposed the prayer made on behalf of the petitioners by submitting that the Tribunal below has considered the relevant material/evidence available on the record and has passed a well reasoned and justified award which does not call for any interference by this Court. It is submitted that the petitioner/Department had failed to prove its pleaded case before the Tribunal below. It is further submitted that the petitioner/Department had neither produce any contract between the petitioner/Department and respondent No.1/workman nor it had shown any contract between the Department and any other contractor, with whom it is claimed that respondent No.1-workman might have worked. It is submitted that in the absence of any evidence that respondent No.1 was working with any contractor or respondent No.1 was himself doing the work as a contractor, the Tribunal below while relying on material/evidence on record, was justified in holding that there was relationship of employer and employee between the parties. 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 Tribunal below has returned the following finding on the issue of existence of relationship of the employer and employee between the parties:-

“19. On the other hand petitioner to prove his claim has placed on record the certificate issued by the Gram Panchayat as Mark-A1 and various receipts regarding his contribution towards the workers union Mark-B, Which clearly shows that petitioner was designated as Pump

Operator. Even the management has issued a cheque Ex-W2 with regard to his payment of wages. MWI has admitted the Ex-W2 (Cheque) has been issued by the respondent office and is correct. It is further admitted that payment of wages for the period 04.07.2005 to 05.07.2012 has been made to the workman through cheques and workman was deputed to work at the tube well at site. The statement of MWI shows that workman was never the employee of any contractor as alleged by the management as the payments have been made directly to the workman and he was deputed to work at tube well at site. If, the workman was not the employee of the respondent then in what connection, the payment of wages were made to the petitioner as admitted by MWI. So this evidence shows that there exists relationship of employer and employee between the parties.”

12. As regards the issue as to whether respondent No.1/workman has rendered continuous service, the Tribunal below has rendered the following finding:-

“23. Though the workman has not placed on record any document to prove his continued service from 04.07.2005 but management has admitted his services from 2005 to 2012 as MW has admitted that payment of wages for the period 04.07.2005 to 05.07.2012 has been made to the workman through cheques. Though the management has alleged that the petitioner himself was a contractor but they have miserably failed to prove this fact as has already been discussed while deciding issue No.1. It has already been held while deciding issue no. 1 that there exists relationship of employer and employee between the parties, now question arises whether the management has followed due procedure while terminating the services of workman On 05.07.2012. On the part of the management witness MWI admitted that the services of the workman

were terminated on 05.07.2012. Admittedly, neither any notice was given to the petitioner nor any compensation was paid to him nor any enquiry was conducted against him before terminating his services, therefore there was a clear cut violation of Section-25(F) of I.D Act. Since no procedure has been followed by the management for terminating the services of the workman on 05.07.2012 and the workman has immediately raised the demand notice on 10.11.2012, therefore, he is entitled for reinstatement and his reference is very well maintainable.”

13. I have considered the aforesaid findings returned by the Tribunal below and have also perused the impugned award. The Tribunal below has considered the admission by the Management-witness that the workman had rendered service from 2005 to 2012 and also the admission by MW1 regarding payment of wages to respondent No.1 for the period 04.07.2005 to 05.07.2012 to hold that there was relationship of employee-employer between the parties and that respondent No.1 had rendered service from 2005 to 2012. The Tribunal below has further held that there was a violation of Section 25-F of the 1947 Act, as no notice or compensation was paid to the workman before terminating his services.

14. Learned counsel for the petitioner has failed to dislodge the aforesaid finding of the fact returned by the Tribunal below. Once the Management-witness had himself admitted that respondent No.1-workman had rendered service from 2005-2012 and has further admitted that he had been paid wages for the period 04.07.2005 up to 05.07.2012 and his services were terminated on 05.07.2012, no fault can be found with the finding returned by the Tribunal below that respondent No.1-workman had rendered continuous service in terms of Section 25-B of the 1947 Act. Since there is

nothing on record to show that before terminating the services of respondent No.1, the provisions of Section 25-F of the 1947 Act had been complied with, accordingly, it has been correctly held that the termination of services of respondent No.1 were in violation of provisions of Section 25-F of the 1947 Act. It is required to be noticed here that the petitioner-Department had failed to prove its pleaded case before the Tribunal below. Learned State counsel has not shown any agreement executed between the Department and respondent No.1 nor any agreement has been shown to have been executed between the Department and any other contractor under whom respondent No.1 is alleged to have been working.

15. Now the crucial question is as to whether the Tribunal below has granted the appropriate relief to respondent No.1 in the peculiar facts and circumstances of this case.

16. Learned counsel appearing for the petitioner has submitted that even if it is considered that the services of the petitioner have been terminated in violation of Section 25-F of the 1947 Act then, as per the settled law, the grant of relief of reinstatement and other consequential benefits is not automatic and it depends on various factors.

On the other hand, learned counsel for respondent No.1 submits that once the services of workman are held to be terminated in violation of Section 25-F of the 1947 Act, then workman is entitled to relief of reinstatement and other consequential benefits, which have been rightly granted by Tribunal below.

17. I have considered the aforesaid submission made by learned counsel for the respective parties. It is observed that in the instant case, the termination of services of respondent No.1 have been held to be in violation

of Section 25-F of the 1947 Act. Here it would be gainful to refer to a few judicial pronouncements wherein various factors have been culled out, which are required to be taken into consideration by Industrial Tribunal while exercising its discretion.

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."

18. 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***.

19. 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.

20. In the instant case, it is observed that respondent No.1 has not placed on record any material to show that he was engaged after following due selection process or that his appointment was against a sanctioned post.

21. It is the settled position in law that no appointment can be made in deviation of or departure from the procedures laid down under law. In ***State of Karnataka v. Uma Devi, (2006) 4 SCC 1***, Hon'ble Supreme Court has observed as under:-

“38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post...”

22. Considering the totality of the circumstances, I am of the considered view that the relief of reinstatement with continuity of service and 10% back wages have been wrongly granted to respondent No.1. In my considered view, it would be appropriate to grant lump sum compensation to respondent No.1. Accordingly, the interest of justice would be met if respondent No.1 is granted lump sum compensation of Rs.3,00,000/-.

23. Accordingly, the instant petition is partly allowed and the impugned award is modified to the extent that instead of the relief of reinstatement with continuity of service and 10% back wages, respondent No.1 would be entitled to lump sum compensation of Rs.3,00,000/- to be paid within a period of 3 months from the date of receipt of a certified copy of this order. In case of non-payment of the amount to respondent No.1 within the stipulated period, the respondent No.1 shall be entitled to claim simple interest @ 6% per annum till such time payment is not made.

24. The Writ Petition stands disposed of in the aforestated terms.

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

05.01.2024

Himani

(HARSH BUNGER)
JUDGE

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