

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9320-2017 (O/M)

Date of decision : 05.01.2024

Rakesh Kumar

..... Petitioner (s)

Versus

Presiding Officer, Industrial Tribunal, Jalandhar and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. R.K. Chauhan, Advocate
for the petitioner.

Mr. M.S. Viridi, Advocate
for respondents No. 2 and 3.

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HARSH BUNGER, J.

1. Petitioner (Rakesh Kumar) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 17.11.2016 (Annexure P-4), passed by respondent No. 1-Presiding Officer, Industrial Tribunal, Jalandhar (hereinafter referred to as 'Tribunal below'), whereby the reference of industrial dispute regarding termination of services of the petitioner was decided in his favour, however, he was not granted reinstatement, but he was found entitled to lump sum compensation of Rs. 1,00,000/-.

2. Briefly, petitioner (Rakesh Kumar) raised an industrial dispute regarding termination of his services. The said disputed was referred for

adjudication to the Tribunal below. As per the claim statement, the petitioner pleaded that he was appointed as a Salesman on 01.07.2008 in the Jharing Co-operative Agricultural Service Society Ltd. (hereinafter referred to as 'respondent-Society') and he worked there upto 09.08.2010 continuously. The petitioner claimed that he completed more than 240 days in every year including the preceding year and he was being paid wages/salary through vouchers upto 31.07.2010. The petitioner stated that he was getting Rs. 3,200/- per month at the time of his illegal termination on 09.08.2010. The petitioner alleged that one Shri Amit Jhariyan, who is junior to the petitioner and is son of former Secretary of the Society has been appointed as a Salesman and his appointment on the said post is absolutely illegal. The petitioner claimed that his services were terminated illegally without complying with provisions of Section 25-F of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') as neither any show cause notice was issued to him nor any chargesheet was served upon him and no department enquiry was conducted before terminating his services. Accordingly, the petitioner prayed for reinstatement in service with consequential benefits.

3. The aforesaid claim was contested by respondent-Society on the plea that the petitioner was appointed on contract basis on leave gap arrangement in place of Ravi Nandan Singh, vide resolution dated 29.07.2008 and when said Ravi Nandan Singh was re-employed then the services of the petitioner were terminated, vide resolution dated 28.10.2009. It was stated that the petitioner joined the services on contract basis. It was submitted that the petitioner was not appointed on the permanent post of Salesman. The

allegation of unfair labour practice was denied. Accordingly, prayer was made for dismissal of the claim of the petitioner.

4. The petitioner filed replication to the reply filed on behalf of respondent-Society.

5. On the basis of pleadings of the parties, the issues were framed and parties led their respective evidence.

6. The Tribunal below, vide award dated 17.11.2016 (Annexure P-4), returned the following findings :-

- a) Petitioner was working as a Salesman since July, 2008 with respondent-Society on the salary of Rs. 3,200/- per month.*
- b) Petitioner worked from 01.07.2008 to 09.08.2010.*
- c) The services of petitioner were terminated on 09.08.2010 and not on 28.10.2009, as claimed by respondent-Society.*
- d) Respondent-Society has failed to prove the fact that the appointment of petitioner was made on contract basis for a specified period.*
- e) Respondent-Society has failed to prove that the services of petitioner were terminated immediately on joining of earlier Salesman.*
- f) Petitioner was not made aware that his appointment is contractual on leave gap arrangement basis and same will be terminated on joining of previous Salesman.*
- g) The termination of services of petitioner is violative of provisions of Section 25-F of 1947 Act.*

h) Petitioner was working since July, 2008 and the appointment of Amit Jhariyan was after the present petitioner and in this manner, he was junior to the petitioner, therefore, there was violation of Section 25-G of 1947 Act as Amit Jhariyan was junior on the date of termination of petitioner i.e. 09.08.2010.

As regards the relief, the Tribunal below returned the following finding :-

“14. The contention of AR of the workman that the workman is entitled to reinstatement with continuity of service and back wages and that of the AR of the management that the workman is not entitled to any relief considered. In the case in hand, the appointment of the workman was not on regular basis. Neither any appointment letter was issued nor any procedure was adopted while making appointment. He was simply inducted by passing resolution. So, he was not a regular employee. He has worked only for two years. Now he is out of service since 9.8.10. Amit Jhariyal is working with the management as a salesman. There is no iota of evidence on record that any other post of salesman is available with the management. So, under these circumstances, this Court is of the opinion that instead of reinstatement, the workman is entitled to lumpsum compensation of Rs. 1 Lac taking into consideration of nature of job and period for which he worked.”

7. Being dis-satisfied with the relief granted by Tribunal below, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for petitioner submits that once the Tribunal below has come to the conclusion that the termination of services of petitioner was in violation of provisions of Sections 25-F and 25-G of 1947 Act, accordingly, the petitioner was entitled to relief of reinstatement and other consequential benefits, however, same has been wrongly denied to the petitioner. Therefore, it was prayed that the impugned award be modified to the extent that the petitioner be reinstated in service with consequential benefits.

9. On the other hand, learned counsel for respondents No. 2 and 3 has opposed the prayer made by learned counsel for petitioner by submitting that the impugned award is well reasoned and justified in the peculiar facts and circumstances of the case and same does not call for any interference by this Court. It is submitted that it is now well settled that when the termination of workman is held to be in violation of provisions of Sections 25-F and 25-G of 1947 Act then the relief of reinstatement of consequential benefits is not automatic and rather grant of relief of compensation has been found to be appropriate. Accordingly, prayer has been made for dismissal of the instant writ petition.

10. I have heard learned counsel for respective parties and have also perused the paperbook with their able assistance.

11. It is worthwhile to refer to the decision of the Hon'ble Apex Court in BSNL Versus Bhurumal, 2014 (3) SCT 49; wherein, the Apex Court

has clearly held that when there is violation of Section 25-F of 1947 Act, the reinstatement with full back wages is not automatic, the workman should be given monetary compensation which will meet the ends of justice. The Hon'ble Supreme Court observed as under :-

“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 25F 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 25F 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 regularisation (See: State of Karnataka v. Uma Devi, (2006) 4 SCC 1), Thus when he cannot claim regularisation 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.”

12. Keeping in view the aforesaid legal position and also the peculiar facts and circumstances of the case especially the finding of fact recorded by the Tribunal below that the appointment of petitioner was not on regular basis and he was simply inducted by passing a resolution and there was no appointment letter issued to petitioner nor it was shown that any procedure was adopted while making appointment of petitioner and also that he had worked only for 2 years, I am of the considered view that the petitioner has been rightly granted the relief of compensation instead of reinstatement and consequential benefits. Therefore, I do not find any illegality or perversity in the impugned award dated 17.11.2016 (Annexure P-4) and the same is accordingly upheld and the instant writ petition is dismissed.

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

(HARSH BUNGER)
JUDGE

05.01.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No