



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

LPA-1109-2017 (O&M)

Reserved on:24.09.2024

Date of decision: 18.10.2024

Balbir Singh

....Appellant

Versus

The Deon Cooperative Agri Services Society Ltd. and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Shreenath A Khemka, Advocate (Amicus Curiae)
for the appellant

Mr. Harbans Sharma, Advocate for the respondents

ANIL KSHETARPAL, JUDGE

This intra Court appeal has been filed by the workman to challenge the correctness of the learned Single Judge's order directing the Management to pay him Rs.1 lakh as compensation in lieu of reinstatement.

The appellant is an illiterate villager, who joined the services of respondent no.1 (Society) as Chowkidar on 13.01.1998. Vide resolution dated 30.05.2000 the Managing Director of the Society promoted him as Sewadar-cum-Chowkidar on payment of salary of Rs.4200/- per month. Subsequently, on account of audit objection by the Cooperative Department, he was ordered to be reverted to the previous

post of Chowkidar by fixing his salary at the rate of Rs.600/- per month.

The resolution to this effect was passed on 26.08.2002 admitting that Society was unaware about the fact that the employee of the Society is to be given promotion with the prior approval of the higher authorities. The appellant filed a representation before the Deputy Commissioner. Subsequently, on an understanding with the Society, he submitted affidavit on 25.06.2003 to the following effect:-

“5. That now a compromise has taken place with the Deon Cooperative Agricultural Service Society Limited, Deon. The Managing Committee has promised me that after dispensing my services, I would be taken back in service after getting approval from the Higher Authorities.

6. That I will have no objection for dispensing my services on the aforesaid condition.

7. That I will withdraw the appeal which is pending with the D.R Cooperative Society Mansa against the resolution dated 23.08.2002. Henceforth, I will also not file any complaint against the Managing Committee.”

Treating this affidavit to be the appellant's resignation, his services were dispensed with. He sought reference and filed his claim petition seeking reinstatement. However, the Labour Court refused to issue direction for reinstatement on the ground that he was wrongly appointed against a regular post of Sewadar-cum-Chowkidar without Registrar's permission and he was rightly reverted as daily wager, who resigned from the same on 25.06.2003. The writ petition filed by him to challenge the Labour Court's award has been partially accepted as the learned Single Judge has ordered that he could not be reinstated in service because his appointment was de hors the service rules but he has

been put to undue harassment for no fault of his and was awarded Rs.1 lakh as compensation.

That is how this Letters Patent Appeal has been filed by the workman.

Heard learned counsel representing the parties at length and with their able assistance perused the paperbook.

Learned amicus curiae, while appearing on behalf of the appellant submitted that irregularity of appointment has no bearing on applicability of Section 2(oo) and Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Affidavit Ex.P-4 was not a resignation and stood vitiated when he was not taken back into service afresh despite the Registrar's order and the Management was guilty of unfair practice.

Per contra, Sh.Sharma, learned counsel representing the respondents-Society submits that appointment of the appellant was against rules and he has concealed the fact of filing a civil suit. He further submits that the appellant has accepted the compensation. Hence, he is estopped from filing the present appeal.

This Court has considered the submission made by the learned counsel representing the parties. The appellant appears to have crossed the age of superannuation. Though the appellant is claimed to have been appointed on 13.01.1988, however, it is evident from perusal of his claim petition, writ petition and grounds of the present appeal that he has been appointed on 13.01.1998. It is also not in dispute that he was promoted as Sewadar-cum-Chowkidar on 30.05.2000 on payment of

a salary of Rs.4200/- per month. The appellant never misrepresented or has ever been guilty of any concealment of facts. The error on the part of the Managing Committee cannot visit appellant adversely. However, as already noticed, it has not been considered appropriate to order his reinstatement. The only issue is with respect to adequate compensation. The appellant admittedly served the respondent-Society for nearly 5½ years. He never submitted any resignation, however, his services were dispensed with. Action on the part of the Society was clearly arbitrary. The word 'retrenchment' as defined in Section 2 (oo) includes retrenchment for any reason whatsoever. Failure to follow the rules while appointing or promoting by the employer has no bearing either on Section 2 (oo) or applicability of Section 25-F of the 1947 Act. Thus, after allowing the appellant to work for a period of 5½ years, his services were unceremoniously dispensed with, without serving him one month's notice and without giving retrenchment compensation as envisaged in Section 25-F. At the relevant time, the appellant was serving on the post of Sewadar-cum-Chowkidar on a monthly salary of Rs.4200/- per month, which would have increased with the passage of time. The compensation awarded by the learned Single Judge is on the lower side. It is not clear as to how many years of service of the appellant were left before attaining the age of superannuation.

Keeping in view the aforesaid facts, this Court is left with no choice but to apply the thumb rule. Hence, the appellant is held entitled to compensation of Rs.2.5 lakhs, which would include Rs.1 lakh as already ordered by the learned Single Judge. This amount shall be

payable within a period of one month from today, failing which the balance amount shall carry interest at the rate of 9% per annum. As far as allegation of concealment is concerned, it may be noticed that learned counsel representing the Society has drawn the attention of the Court to the judgment passed by the learned District Judge, Bathinda on 03.08.2019 wherein the appeal filed by the Society was accepted, while setting aside the judgment passed by the trial court. It is evident from the reading of the judgment that the appellant filed civil suit for mandatory injunction seeking direction to the defendants to appoint him as Chowkidar on the basis of first preference. The judgment passed by the First Appellate Court does not prove that the appellant challenged action of the Management dispensing with his services in the civil suit. In any case, the jurisdiction of the civil court stands excluded, particularly when Industrial Disputes Act, 1947 is applicable. Moreover, appellant is not estopped from filing appeal merely because he has received the compensation as ordered by the learned Single Judge. The estoppel can be applied against the appellant only when because of the appellant's representation, respondent no.1 has changed its position, which is not the case herein.

All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

18.10.2024

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Whether speaking/reasoned : Yes

Whether reportable : No

(SHEEL NAGU)
CHIEF JUSTICE