

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-2158-2017 (O&M)
Reserved on: 16.10.2024
Date of decision: 25.10.2024

EXECUTIVE ENGINEER EAST DIVISION PSEB
NOW PSPCL, JALANDHAR

..Appellant

Versus

PAWAN KUMAR (DECEASED) THROUGH LRS AND ORS.

..Respondents

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

Present: Mr. Vikas Chatrath, Advocate for the petitioner.

Mr. G.P. Vashisht, Advocate for respondent No.1.

Mr. Saurav Khurana, Addl. Advocate General, Punjab.

* * *

ANIL KSHETARPAL, J.

CM-4730 & 4729-LPA-2017

1. For the reasons stated in the applications for condonation of delay which are supported by the affidavits, the application are allowed.

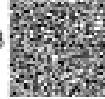
2. The delay of 157 days and 3 days in refiling and filing the appeal, respectively, is condoned.

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3. This intra Court appeal has been filed to challenge the correctness of learned Single Judge's judgment passed on 22.03.2017, which in turn has upheld the Labour Court's award passed on 15.02.1996, directing the reinstatement in service of respondent No.1 with 1/3rd back wages.

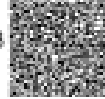
4. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are as under:-

Respondent No.1 has not only attained the age of



superannuation and therefore, retired but he has also passed away. He joined as a driver on work charge basis on 18.11.1986, however, he was absent from duty between 16.07.1990 to 16.08.1990. Despite direction to resume duty as per telegram dated 16.07.1990, communication dated 17.07.1990, telegram dated 18.07.1990, communication dated 18.08.1990 and memorandum dated 03.08.1990, he did not join the duty. On 16.07.1990, the Management informed respondent No.1 that he was no longer required in service and was being served with a 30 days notice, whereupon, with effect from 16.08.1990, his services would be deemed to have been retrenched. He was also informed to collect compensation amounting to Rs.3,106/- from the office of the appellant on the last day of notice period. This notice was served personally upon respondent No.1 but he refused to accept the notice, which was subsequently, sent by registered post but was received back 'Undelivered' as he refused to accept the same. On a demand notice, the matter was referred to the Labour Court, Jalandhar. Upon appreciation of evidence, the reference was answered in favour of the workman and he was held entitled to reinstatement in service with 1/3rd back wages.

5. In the Management's writ petition, originally reinstatement was stayed, which remained in force for nearly 21 years, but was dismissed with cost of Rs.25,000/- by learned Single Judge to defray litigation expenses.



6. On 13.11.2017, the Division Bench passed the following order:-

“Contends that compensation would have been a more feasible course to be adopted considering the length of engagement i.e. 3 years and the fact that the workman is now due to attain superannuation.

Notice of motion for 7.3.2018.

In the meantime, direction qua reinstatement shall remain stayed subject to appellants’ depositing the amount of Rs.3 lacs without prejudice to the rights of either parties before the Labour Court Tribunal.”

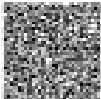
7. Pursuant thereto, the Management deposited Rs.3,00,000/- with the Industrial Tribunal, Jalandhar, which was directed to be kept in a Fixed Deposit Receipt (FDR) in the bank.

8. Learned counsel for the appellant contends that Rs.3,00,000/- has already been deposited, which has carried interest from 2018. He submits that with the passage of time, respondent No.1 cannot be reinstated because he not only attained the age of superannuation but has also expired. He submits that under Section 17-B of the Industrial Disputes Act, 1947 (in short ‘1947 Act’), respondent No.1 has been paid a sum of more than Rs.4,00,000/-. He submits that impugned order deserves to be modified accordingly.

9. Per contra, learned counsel for legal representatives of respondent No.1 has contested the appeal on the ground that respondent is entitled to reinstatement because he died after attaining the age of superannuation.

10. Having heard learned counsel for parties, this Court now proceed to decide the matter.

11. It is evident that respondent No.1 worked only for a period of three years and eight months, thereafter, he absented from duty and he never came forward to resume duty despite repeated communications. Technically, the retrenchment compensation was not paid in accordance with Section



25-F of 1947 Act, hence, there is no substantive error in the judgment passed by the Labour Court, however, at this stage the Court is required to decide the dispute in accordance with law. The relief of reinstatement in service is not automatic and universal rule. Reliance can be placed upon the *General Secretary Coal Washeries Workers Union Dhanbad Vs. Employers in relation to the Management of Dugda Washery of M/s BBL, (2016) 16 SCC 148*. The respondent was not permanent employee but was contractual employee. There is no evidence to establish that the Management retained junior drivers to respondent No.1. No doubt, there is a violation of mandatory provision of Section 25-F of 1947 Act, however, in the considered opinion of this Court, the compensation shall serve the ends of justice.

12. Keeping in view the aforesaid facts, the judgment passed by the learned Single Judge is substituted and legal representatives of respondent No.1 are held entitled to withdraw the amount of Rs.3,00,000/- along with interest, which is lying deposited in Labour-cum-Industrial Tribunal, Jalandhar. The payment of more than Rs.4,00,000/- during the pendency of the appeal, as required under Section 17-B of 1947 Act cannot be adjusted towards the compensation payable in lieu of relief of reinstatement.

13. Accordingly, the order passed by the learned Single Judge is modified and the present appeal is disposed of.

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

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

October 25th, 2024

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No