



210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-238-2020(O&M)
Date of decision: 03.09.2024

Baljinder Singh

...Petitioner

Vs.

Industrial Tribunal, Patiala and another

...Respondents

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

Present: Ms. Anamika Sheoran, Advocate
for Mr. Vikas Singh, Advocate
for the appellant.

Mr. Sanjeev Soni, Advocate
Mr. Sarthak Soni, Advocate
for respondent No.2.

ANIL KSHETARPAL, J.

1. By filing this intra Court appeal, the appellant calls in question the correctness of judgment passed by learned Single Judge on 28.11.2019, which in turn has modified the award passed by the Industrial Tribunal.
2. The Industrial Tribunal's passed award on 08.07.2014, wherein it allowed compensation of Rs. 22,500/- to the appellant in lieu of reinstatement, which in a writ petition filed by the workmen has been enhanced to Rs.70,000/-. However, the Courts have refused to order appellant's reinstatement in service for the reasons that the appellant does not possess the essential qualification for appointment to the post of Pump Operator in Municipal Council.
3. Learned counsel representing the appellant has submitted that the



Tribunal as well as learned Single Judge found that his services were terminated in violation of the provisions under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). However, the relief of reinstatement with backwages has been refused only because the appellant does not have requisite qualification for the post of Pump Operator. While relying upon the judgment passed by Hon'ble Supreme Court in '**Bhagwati Prasad and others v. Delhi State Mineral Development**', 1990 (1) SCC 361, he prays for reinstatement with all backwages.

4. *Per contra*, learned counsel representing Municipal Council contends that the appellant does not possess the minimum qualification for the post and he is out of service for the last 16 years. He submits that the judgment passed in *Bhagwati Prasad's case (supra)* would be deemed to have been overruled in '**State of Karnataka and others v. Umadevi and others**', 2006(4) SCC 1 and explained by the Division Bench of Himachal Pradesh High Court in '**HRTC and another Vs. Yash Paul Singh Katoch**', SCC online.

5. This Court has considered the submissions while evaluating, analyzing and appreciating the respective arguments of learned counsel representing the parties.

6. The appellant has served as Pump Operator on daily wages from 01.01.2004 to 29.06.2008. The respondent is Municipal Council, which is also required to look after supply of potable water to the residents of the area. The services of the employees of the Municipal Council are governed by the Service Rules. The appellant has remained in service for approximate period of 4½ years. At the time of termination, appellant was stated to be getting



Rs.25,000/- per month. His services were terminated on 29.06.2008, whereas, the award of the Industrial Tribunal was passed on 08.07.2016, which is little bit more than 08 years. The total salary payable as daily wages would be approximately Rs. 2,00,000/- as the minimum wages would have been increased/revised from time to time.

7. The arguments of learned counsel for the appellant to the effect that once there is violation of Section 25-F of the Act, the reinstatement in service is mandatory, lacks substance. In this case, the appellant's services were terminated in 2008. The Industrial Tribunal as well as learned Single Judge have not found it appropriate to order his reinstatement. Moreover, the appellant does not possess the minimum required qualification for the post of Pump Operator. The experience of approximately 4½ years would not itself be sufficient to ignore the requisite qualification as laid down in the service rules. In ***Bhagwati Prasad's case (supra)*** petition under Article 32 of the Constitution of India was filed directly in Supreme Court. After noticing that the workmen are continuing to perform work without any unjustifiable break, the direction deserves to be issued to regularize the services of the workmen. The Court's direction to regularize the services of daily wager/temporary/ad hoc employees is not required to be resorted to in view of the judgment passed by Five Judge Bench in ***State of Karnataka's case (supra)***. To that extent ***Bhagwati Prasad's*** judgment shall stand overruled. Moreover, the reinstatement of the employee is not automatic if violation of Section 25-F of the Act, is found by the Court. The Court is required to apply its mind in the peculiar facts and circumstances of the case. A Full Bench of this Court in



‘Municipal Council, Dina Nagar Vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015(1) PLR 465 has laid down that the right of reinstatement is not automatic or mandatory. Before ordering reinstatement, the Industrial Tribunal/Labour Court is required to consider various aspects. Hence, the argument of appellant’s counsel lacks substance.

8. However, there is another aspect of the matter. The appellant after having served for 4½ years has been ordered to be paid Rs. 70,000/-. There is a gap of little more than 08 years from the date of illegal termination till the award passed by the Labour Court. If his wages are calculated @ Rs.2,500/- per month, the total wages payable to him at the time of award of the Labour Court comes to be Rs.1,80,000/-. In the meantime, there is likelihood of revision of minimum wages.

9. Keeping in view the aforesaid facts, the compensation in lieu of reinstatement shall be Rs.2,00,000 instead of Rs.70,000/-.

10. With these observations, the appeal is partly allowed.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

03.09.2024

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Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

No
No