

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

LPA-635-2022 (O&M)
Reserved on: 05.12.2024
Date of decision: 08.01.2025

HARISH KUMAR

...Appellant

Versus

BHAKRA BEAS MANAGEMENT BOARD, BBMB BUILDING,
SECTOR 19, MADHYA MARG, CHANDIGARH THROUGH ITS
CHAIRMAN AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Pritam Saini, Advocate
for the appellant.

Ms. Sanchi Bindra, Advocate for
Mr. Amar Vivek Aggarwal, Advocate
for the respondents.

SURESHWAR THAKUR, J.

1. The appropriate government made the hereinafter reference to the Labour Court-cum-Industrial Tribunal, so that, thereons an award becomes pronounced.

2. In pursuance to the making of the reference (supra), by the appropriate government, thus on the pleadings of the parties, the following issues became struck by the Labour Court-cum-Industrial Tribunal (hereinafter referred to as 'LCIT').

“Whether the action of the Executive Engineer, O&M Division BBMB, Dhulkot in terminating the services of Shri Deep Ram, son of Shri Amar Singh, T. Mate from 10.1.1986

is justified? If not, what relief the concerned workman is entitled to and from what date?

3. After receiving evidence on the (supra) issues, the LCIT concerned, concluded that an evident breach became made to the provisions, as carried in Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), provisions whereof becomes extracted hereinafter, inasmuch as, the statutory condition(s) precedent for therebys making lawful the retrenchment(s) of the workman, rather remained uncomplied with.

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”

4. The non compliance to the apposite statutory conditions precedent ensued from; a) despite the workman evidently rendering 240 days of continuous service in the relevant calendar year, whereupon a per-emptory obligation became cast, upon the employer to give him one month notice in writing indicating the reasons for retrenchment, yet the said condition precedent becoming breached at the instance of the

employer; b) the workman becoming not paid in lieu of such notice wages for the period of notice.

5. Though omission on the part of the employer to issue upon the workman the (supra) notice but was condonable through the employer paying to the workman wages rather for the period of notice, but even the said saving mode in alternative to the (supra) mode also remained evidently uncomplied with. In consequence, the reference (supra) become answered in favour of the workman.

6. The further reason which became assigned by the LCIT concerned, is carried in paragraph 19 of the award, paragraph whereof becomes extracted hereinafter.

“19. The management also violated the provisions of Section 25 G&H, as is alleged and proved by the workman. They admitted that seniority list Ex.W8 is their document. Page 8 of this document contains the names of T.Mates, Kashmir Singh and others up to Jaswinder Singh shown from Sr. No.192 to 203. As per this record these persons were recruited between the period 01.10.81 to 20.06.85. The petitioner has claimed that these T.mates, who were junior to him, were retained in service whereas his services were terminated on 10.01.86. The management has failed to explain this position as their witness S.C. Mangal beat about the bushes, when stated that he cannot say as to whether those persons were juniors to the petitioner or not. Thus, this claim of the workman is also proved.”

7. Therefore, ultimately the LCIT concerned, allowed the reference and also directed the respondent-employer to pay wages upto the extent of 50%, as the workman was evidently re-employed for a certain period, relevant paragraph whereof becomes extracted hereinafter.

“23. It has come on record that after his retrenchment, the workman was given re-employment for certain periods. The management has not shown that right from the date of his termination, except for the period he was re-employed by them, the workman remained gainfully engaged, whereas the workman has stated in his statement that he remained idle although without job except for the period, he was re-employed by the management. Taking these facts into consideration I hold that the workman is entitled to the back-wages from the date of termination of his services till date, excluding the period during which he remained employed with the management. As regards the extent of the wages I am of the opinion that since the workman did not actually served the management, though not for his own fault, it will be in the interest of justice that only wages up to the extent of 50 per cent be paid to the workman. The reference made is, therefore, answered in these terms. A copy of this award be sent to the appropriate Govt. for necessary action the file be consigned to record after due completion.”

8. Becoming aggrieved from the award (Annexure A-1), the present appellant preferred CWP-12712-2002 before this Court. On the said writ petition, the learned Single Bench, though upheld the findings recorded by the LCIT concerned, to the extent, that there was breach caused to the statutory norms respectively borne in Section 25F, G & H of the Act. However, a further conclusion was also made by the learned Single Bench to the extent, that since the workman had superannuated, thus thereby there was a grave deterrence against his becoming reinstated in service. As such, the writ petition become partly allowed to the extent (supra).

9. Nonetheless, the learned Single Bench, made a direction upon the employer to pay an amount of Rs.2 lakh within a period of 6 weeks from the date of receipt of copy of the order, as full and final

settlement of his claim. The above verdict pronounced by the learned Single Bench of this Court in CWP-12712-2002, has been challenged by the aggrieved-workman by preferring the instant LPA before this Court.

10. Since a well formed reason has been recorded by the learned Single Bench to deny the relief of reinstatement, in service, thereby the denial of relief of reinstatement in service to the present appellant, thus cannot be interfered with. As such, the said part of the order is affirmed and maintained.

11. Moreover, in the operative part of the verdict (supra), the learned Single Bench of this Court granted a lump sum compensation of Rs.2 lakh to the present appellant. The said awarding of compensation to the present appellant in lieu of his being reinstated, in service, is however liable to be interfered with by this Court.

12. The reason for drawing the above inference ensues, from a reading of the operative part of the verdict made by the LCIT concerned, wherein it is echoed that the workman was candid in disclosing that he was gainfully re-employed only for a certain spell of time. Moreover, when it is also crystal clear from a reading of the (supra) extracted operative part of the verdict made by the LCIT concerned, that the workman in his testification did make an echoing, that except the above spell of time, he remained not gainfully employed. Conspicuously, since the said part of the statement of the workman remained unrebutted by the employer through their leading cogent evidence but displaying that for the said spell of time, the workman was gainfully employed, thereby credence is to be assigned to the testification of the workman, that excepting the afore spell of time, thus he remained not gainfully

employed. If so, the above operative part of the verdict, was required to be upheld, rather its becoming negated through the impugned order becoming recorded by the learned Single Bench of this Court.

13. In aftermath, this Court finds merit in the appeal and with the observation(s) aforesaid, the same is partly allowed. Consequently, the impugned order is quashed and set aside to the extent that it has not granted relief of wages to the present appellant for the period when he was evidently not gainfully employed, whereas, the other part of the order, as passed by the learned Single Bench of this Court, is upheld. Accordingly, (supra) extracted operative portion of the award (Annexure A-1) is affirmed and upheld.

(SURESHWAR THAKUR)
JUDGE

08.01.2025

Ithlesh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No