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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision :04.02.2025

Vinay Gupta

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Patiala
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Raj Kaushik, Advocate for the petitioner.

Mr. Mukul Aggarwal, Advocate for respondents No.2 to 4.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is against the award dated 02.09.2013 (Annexure P/8) passed by the Presiding Officer, Industrial Tribunal, Patiala on the ground that the compensation awarded is inadequate in contrast to the length of service rendered by the petitioner-Workman

2. Learned counsel for the respondents submits that the Tribunal while adjudicating upon the issue has kept in view the totality of circumstances and the evidence which have come on record and as such, the compensation has already been awarded by the Tribunal hence, the plea that the same is inadequate, may kindly be rejected.

3. I have heard learned counsel for the parties and have gone through the record with their able assistance.



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4. The question as to how the compensation should be assessed in view of the reinstatement, is no longer res integra. The Division Bench of this Court while passing order in **LPA No.1326-2023 titled as Pardeep Kumar Sharma vs. Commissioner and Secretary to Govt. Of Haryana and others, decided on 09.04.2024** held as under:-

20. The Apex Court has laid down the principles that instead of reinstatement, compensation should be awarded. Reference can be made to the judgments wherein, the said principle was laid down. Reliance can be placed upon the judgment in **Incharge Officer and another vs. Shankar Shetty, (2010) 9 SCC 126**, wherein, Rs.1,00,000/- was granted as compensation for 7 years of service. The Apex Court had relied upon **Jagbir Singh vs. Haryana State Agricultural Marketing Board, (2009) 15 SCC 327** and other precedents to hold that a daily wager who had worked intermittently about 25 years back was entitled for the said compensation. In **Bharat Sanchar Nigam Ltd vs. Man Singh, (2012) 1 SCC 558**, the workman had put in service during the year 1984-85 and the industrial dispute had been raised after 5 years and, thus, a sum of Rs.2,00,000/- was awarded as compensation by setting LPA-1326-2023 (O & M) 10 aside the award of reinstatement which had been awarded by the Courts below. In **Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh, (2013) 5 SCC 136**, a sum of Rs.50,000/- had been granted keeping in view the fact that the workman had only worked for a period of 8 months as a daily wager. The said view was followed in **BSNL vs. Bhurumal, (2014) 7 SCC 177** wherein, it was held that the claim was that he had worked for 15 years from 1987 to 2002 and resultantly, reinstatement was not granted but compensation was granted of Rs.3,00,000/- by keeping in view the facts that termination took place



more than 11 years back. The Full Bench of this Court in **Municipal Council, Dina Nagar, Tehsil & District, Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (1) PLR 465**, authored by one of us i.e G.S. Sandhawalia, J., on the reference made, which was decided by keeping the following three questions in mind:-

- “(i) Whether the principles laid down in **State of Karnataka and others vs. Uma Devi and others (2006) 4 SCC 1** relating to appointment to public service would be applicable while considering reinstatement under the Industrial Disputes Act, 1947?
- ii) Whether the failure to fill up the public posts in accordance with the relevant statutory Recruitment Rules disentitles a workman for reinstatement?
- (iii) Whether a workman can be paid compensation for wrongful termination effected in violation of Section 25-F of the Industrial Disputes Act, 1947 in lieu of reinstatement?

21. In the said case the workman was appointed as a Clerk. After examining all the judgments of the Apex Court in detail, it was held that the reinstatement could not be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules. If there has been violation of the provisions of 1947 Act, the provisions of Section 25-F being mandatory, the retrenchment was void ab initio as if it was never in operation, therefore, the employee would be deemed to be continued in service. However, a caveat was put that the right of reinstatement is not an automatic right as such and various aspects as to the nature of appointment, the availability of a post, the availability of work has to be seen. The public authorities could not claim total immunity and protection from the provisions of Sections 25-F and 25-B of the 1947 by taking resort to and shielding themselves on account of the fact that the posts were



not filled up in accordance with the relevant statutory recruitment rules. Resultantly, it was held that no strict straight jacket formula could be laid down. The question were answered accordingly by laying down the following principles:-

“48.....Thus, the following principles are laid down:-

(I) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled



in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.

49. The facts in this case demonstrate that the appointment was for a short period and the workmen had only worked for two years but there are instances which come to the notice of this Court that workmen have continued for longer periods and in some instances for decades. Though we are not deciding on merits since the Full Bench is only to decide the question of reference claimed and in such circumstances, it cannot be held as a matter of rule that merely because the posts were not filled in accordance with the statutory provisions, monetary compensation would be the only answer and relief of reinstatement is to be denied out rightly. The Industrial Adjudicator will always take into consideration the fact that though it had a power to reinstate but while issuing any other directions wherein regularization is to be ordered on the strength of some policy, it would always keep in mind the law laid down by the Constitutional Bench in **Uma Devi's case (supra)** and necessarily, such an exercise is thus to be



carried out in the facts and circumstances of each case and no strict straight jacket formula can be laid down that reinstatement is to be directed in all cases or to the contrary that on account of violation of Section 25-F of the Act regarding the appointments to public posts, compensation would be the only remedy.

50. In view of the above, the main appeal will go back to the Hon'ble Division Bench for a decision on merits, keeping in view the principles laid down above.”

20 Thus, keeping in view the above said principle and the claim for work for 8 years as per the certificate dated 15.03.1996 and the admission regarding a period of 6 years, we are of the considered opinion that a sum of Rs.3,50,000/- would be adequate compensation for the conflicting claims of the period of employment. Resultantly, the State shall pay a sum of Rs.3,50,000/- to the appellant by way of bank draft within a period of 2 months from the date of receipt of certified copy of the judgment.”

5. Learned counsel for the respondents has not been able to dispute the fact that petitioner had 4 years of service to his credit before his services were terminated and keeping in view the judgment in **Pardeep Kumar Sharma (supra)** for every completed year of service, compensation of Rs.50,000/- is to be paid.

6. Keeping in view the same, the award dated 02.09.2013 (Annexure P/8) passed by the Labour Court is accordingly modified to the extent that the petitioner-workman will now be entitled for the compensation to the tune of Rs.2 lacs, which is to be paid to the petitioner-workman within a period of two month from the date of receipt of copy of this order. It is directed that in case, the compensation granted by this order is paid within a period of two months, no interest shall be paid by the

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respondents but in case, the said direction is not complied with, the petitioner-workman shall also be entitled for the benefit of interest @ 6% on the amount of Rs.2 lacs starting from today.

7. Present petition is disposed of in above terms.

February 04, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No