

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

LPA-778-2022

Reserved on: 05.12.2024

Date of decision: 08.01.2025

SHAM SINGH

...Appellant

Versus

SUPERINTENDING ENGINEER, MECHANICAL CIRCLE, RANJIT
SAGAR DAM PROJECT, SHAHPURKANDI TOWNSHIP AND
ANOTHER

...Respondents

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

Present: Mr. Tahaf Bains, 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, 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 (hereinafter referred to as 'LC').

1. Whether the present reference is not maintainable as alleged?

2. Whether termination of services of the workman is justified and in order?

3. Relief.

3. After receiving evidence on the (supra) issues, the LC 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 compliances 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, thus 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 alternate to the (supra) mode, also remained evidently uncomplied with. In consequence, the reference (supra) become answered in favour of the workman.

6. However, the LC concerned, though ultimately allowed the reference but it also directed the respondent-employer to reinstate the workman with continuity of service and full back wages from the date of his being retrenched from service.

7. Becoming aggrieved from the award (Annexure P-1), the Superintending Engineer Mechanical Circle preferred CWP-2386-1993 before this Court. On the said writ petition, the learned Single Bench though upheld the findings recorded by the LC concerned, to the extent, that there was breach caused to the (supra) statutory norms borne in Section 25F of the Act. However, a further conclusion was also made by the learned Single Bench, to the extent that since the workman had superannuated, therebys there was a grave deterrence against his becoming reinstated in service. As such, the writ petition become partly allowed to the extent (supra).

8. Nonetheless, the learned Single Bench in paragraph 8 of the impugned order, also made a direction upon the employer to pay to the workman an amount of Rs.2.5 lakh, thus within a period of 4 weeks, from the date of receipt of certified copy of the order. The above verdict pronounced by the learned Single Bench of this Court in CWP-2386-1993 has been challenged by the aggrieved-workman by his preferring, the instant LPA before this Court.

9. Since the (supra) well formed reason has been recorded by the learned Single Bench, thus to deny the relief of reinstatement, especially when therebys there was but naturally a grave deterrence working upon the respondent, thus to reinstate the present appellant in service. Resultantly, 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.

10. Moreover, in the operative part of the verdict (supra), the learned Single Bench of this Court granted a lump sum compensation of Rs.2.5 lakh to the present appellant. The said awarding of compensation to the present appellant in lieu of his being reinstated is both just and fair, especially when no potent evidence exists on record, thus displaying that since his being retrenched from service and till his filing the reference petition, rather his evidently remaining not gainfully employed. Consequently, when only upon the adduction of (supra) evidence, rather may have constrained this Court to enhance the (supra) compensation amount. However, when the said evidence remained unadduced, therebys the awarding of the (supra) lump sum compensation to the present appellant, thus is not liable to be interfered with.

11. In aftermath, this Court finds no merit in the appeal and with the observation(s) aforesaid, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

08.01.2025

Ithlesh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No