

CWP-3029-2015 (O&M)

Date of Decision : 27-02-2025

LAL BAHADUR

.....Petitioner

VERSUS

STATE OF PUNJAB AND ORS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Samarth Sagar, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance being raised by the petitioner-Workman is qua the award dated 24.09.2014 passed by the Labour Court whereby the claim of the petitioner has been rejected on the ground that nothing has come on record to show that there was a master and servant relationship between the petitioner-Workman and the respondent and no appointment order or termination order was produced hence, no benefit can be granted to the petitioner-Workman.

2. Learned counsel for the petitioner-Workman argues that the petitioner-Workman is a Class-IV employee and was working with the respondents, which fact was mentioned in the claim petition.

3. Learned counsel for the petitioner-Workman further submits that as per the reply filed to the claim petition, Annexure R-1 states that the petitioner-Workman was appointed in the Construction Circle No.4 of the

S.Y.L Canal Project, Patiala, Punjab and his services were terminated in August, 1998.

4. Learned counsel for the petitioner-Workman submits that once, the appointment of the petitioner-Workman and the working of the petitioner-Workman with the respondents was conceded by the respondents, the onus shifts upon the respondents to show as to for what period the petitioner-Workman had worked so as to deny the claim whereas, the claim of the petitioner-Workman has been rejected by the Tribunal on the ground that the location of Circle No.4 or the Officer under whom the petitioner-Workman was working could not be stated by the petitioner-Workman except that he was working at the house of one “Mr. Chadhha”, so as to hold that there was no master and servant relationship between the parties.

5. Learned counsel for the petitioner-Workman submits that as the respondent did not produce the actual record before the authorities, the claim of the petitioner has been rejected by ignoring the admissions in the written statement, copy of which has been appended as Annexure R-1 wherein it has been mentioned that the petitioner-Workman was working from 07.05.1982 till August, 1988 and no record was produced so as to reject the said claim hence, the presumption should have been drawn against the respondents rather than rejecting the claim of the petitioner-Workman.

6. Learned counsel appearing on behalf of the respondents submits that though, certain averments have been made in the reply to the claim petition but, the petition was filed before the Tribunal after a period of 21 years hence, the record could not be maintained with regard to the actual service rendered by the petitioner-Workman and even the petitioner-Workman could not substantiate his claim so as to prove that he had worked

from 1982 till 1988 so as to claim the benefit and keeping in view the statement of the petitioner-Workman, which missed the crucial points to prove his engagement with the respondent, the Tribunal was well within its jurisdiction to deny the claim hence, the award of the Tribunal may kindly be maintained.

7. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

8. It is not a case where, it has been denied by the respondents that the petitioner-Workman did not work with them. The relevant paragraph of the reply filed to the claim petition before the Tribunal is as under:-

“1. That the services of the claimant were terminated on August 1988 and the demand notice dated 12-01-2009 has been filed after lapse of 21 years i.e much expiry of limitation period, hence time barred,

2. That the workman was employed by Construction circle No.4 of S.Y.L. canal project Patiala. The claimant remained on duty at Patiala, so this Honorable court has no jurisdiction to hear this case.”

“XXX.....

Admitted to the extent that claimant was employed as peon on 89 days basis purely on temporary basis. No appointment letter was ever issued to him by any competent authority.

....XXX”

9. A bare perusal of the above reproduction would show that the respondents conceded that there was a master and servant relationship between the petitioner-Workman and the respondents. Once, the said fact has been conceded, it becomes the duty of the respondent being a model employer to present the facts before the authorities concerned in respect of

the claim being raised qua the termination of services of petitioner. Though, it can be safely said that as the claim was raised after a period of 21 years, there can be a possibility that the record was weeded out but the same was not pleaded by the respondents as, even, in the reply to the claim petition, the termination of the services of the petitioner-Workman in August, 1988 as well as that the petitioner-Workman was working in the Circle No.4 of the SYL Canal Project, Patiala, Punjab has been conceded by the respondents.

10. That being so, once the respondents conceded material facts, then, the respondents should have also informed about the date of appointment of the petitioner-Workman, which information was withheld from the Labour Court. In the absence of any contradictory evidence being brought on record by the respondents that the petitioner-Workman was not appointed in the year 1982 as being alleged by him, which is also reiterated in the evidence given by the petitioner-Workman, the Tribunal should have given due consideration to the said evidence as well as the stand of the respondents in their written statement before rejecting the claim of the petitioner.

11. The totality of the circumstances makes it clear that the petitioner-Workman was working with the respondents from 1982 till August 1988 and it can be safely said that he had completed 240 days in service in the 12 months preceeding the termination of his services. Nothing has come on record that Section 25F of the Industrial Disputes Act, 1947 was complied with by the respondents while terminating the services of the petitioner-Workman hence, it can be safely said that there was a violation of Section 25F of the Industrial Disputes Act, 1947 at the time of the termination of the petitioner-Workman.

12. Further, the Circle-4 S.Y.L Canal Project, Patiala, Punjab has already been abandoned which has come on record hence, the question of reinstatement of the petitioner-Workman in service with continuity does not arise.

13. In the facts and circumstance of the present case, keeping in view the judgment of the Division Bench of this Court in ***LPA No.1203 of 2021 titled "Sukhbir Singh Vs. State of Haryana and ors."*** decided on 01.03.2023, where reinstatement cannot be granted after holding that the termination was bad, the employee should be given compensation. The relevant paragraphs of the said judgment are as under:-

"6. Resultantly, once the workman had completed 240 days and apparently had worked for a period spanning more than 5 ½ years, we are of the considered opinion that dispensing of his service before his contractual period came to an end would entitle him for the statutory protection which would be evident from the award of the Labour Court. However, keeping in view the fact that at this point of time, it would not 3 of 5 Neutral Citation No:= be justified to put him back in service since a period of almost 25 years has gone by and therefore, it would be just and appropriate to award compensation to the tune of Rs.2,50,000/- on an average of Rs.50,000/- per year, keeping in view the fact that the State had taken his service for more than 5 years with the same office in different districts.

7. The Apex Court in Haryana Urban Development Authority Vs. Om Pal, (2007) 5 SCC 742 granted Rs.25,000/- for the service of one year whereas in Uttaranchal Forest Development Corporation Vs. M.C.Joshi, (2007) 9 SCC 353, for a period of 2 years, a sum of Rs.75,000/- was granted. Similarly, in Asst.Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh, 2013 (1) SCR 679, the said view was followed while noticing that the service was of 8 months and thus, compensation of Rs.50,000/- was granted. Similarly, in Management, Hindustan Machine Tools Ltd. Vs. Ghanshyam Sharma, 2018 (18) SCC 80, for a period of one year, compensation of Rs.50,000/- had been granted. In K.V.Anil Mithra & another Vs. Sree Sankaracharya University of Sanskrit & another, 2021 (4) SCT 415, for a period of little over 4 years, amount awarded was Rs.2,50,000/- in lieu of the reinstatement and backwages of 50% which was granted and accordingly, modified."

14. As per the judgment in *Sukhbir Singh's case (supra)*, the compensation should be assessed @ Rs.50,000/- for each completed year of service. As the petitioner-Workman has completed 6 years of service, the respondents are directed to pay a lumpsum compensation of Rs.3,00,000/- as full and final settlement of amount. The order be complied with within a period of eight weeks from the receipt of copy of this order.

15. Present written petition is allowed in above terms.

16. Pending application, if any, also stands disposed of.

27-02-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO