

(2012) 06 SHI CK 0130
In the High Court Of Himachal Pradesh
Case No : LPA No. 78 of 2012

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Sh. Krishan Kumar and The Presiding Officer, Central
Government Industrial Tribunal-cum- Labour Court-II, Extn.
Press Building Depot, 3rd Floor, Sector 18, Chandigarh, UT

RESPONDENT

Date of Decision : 12-06-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2013) 1 SCT 241

Hon'ble Judges : Kurian Joseph, C.J.; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Ashok Sharma, for the Appellant; Naveen K. Bhardwaj and Advocate
For respondent No.1, for the Respondent

Final Decision : Dismissed

Judgement

Justice Dharam Chand Chaudhary, Judge

CMP(M) No. 320/2012

1. For the reasons set out in the application, which is duly supported by an affidavit, the delay of 38 days in filing the appeal, which has been sufficiently explained, is condoned. The application is disposed of.

LPA No. 78 of 2012

The challenge herein is to the judgment dated 13.12.2011 rendered in CWP No.297/2008-B, whereby the learned Single Judge while upholding the award (Annexure A-2 to the writ petition) passed by the Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh in Case I.D.No. 98/2K5, has dismissed the writ petition. The legality and validity of the impugned judgment has been questioned in the present appeal on the grounds inter alia that irrespective of no evidence having been led by the respondent-workman before the Industrial Tribunalcum- Labour Court, neither the award could have been

passed by the Tribunal nor the same upheld by the learned Single Judge.

2. The factum of the respondent-workman being merely a casual labourer engaged on day-to-day basis and pursuant to the requisition made by the petitioner-appellant to various Employment Exchanges, the respondent-workman who competed along with other candidates sponsored for being engaged as Mazdoor, however, failed to come to the expectation of the Selection Committee, was stated to be neither considered by the Industrial Tribunal-cum-Labour Court nor by the learned Single Judge in its right perspective. It is pointed out that the respondent-workman had managed his engagement on daily waged basis through back-door entry. However, when competed with other eligible candidates during the legal mode of employment resorted to by the appellant-petitioner being not found suitable, was rejected by the Selection Committee and in such a situation there was no other alternative except to dispense with his employment managed through back-door entry. The learned Single Judge has not appreciated this aspect of the matter as well as the case law cited during the course of arguments in its right perspective, which has resulted into miscarriage of justice. It has also been pointed out that the respondent-workman was terminated long back i.e. 15 years ago and if reinstated at this stage is likely to affect those who were selected after competing with other candidates. It has thus been submitted that even if termination of the service of the respondent-workman was found to be legal in that event also only a direction for grant of compensation in lieu of reinstatement could have been given. This aspect is stated to be not only overlooked by the Industrial Tribunal-cum-Labour Court but by the learned Single Judge also.

3. On going through the record available at this stage, we are satisfied that the impugned judgment neither suffers from any illegality nor irregularity and rather is based upon the appreciation of facts of this case as well as the legal provisions in its right perspective. No doubt the respondent-workman did not opt to produce any evidence before the Industrial Tribunal-cum-Labour Court, however, for that matter the appellant-petitioner has also not produced any evidence. Above all, the Industrial Tribunal-cum-Labour Court on the basis of the admitted facts had concluded that there was violation of mandatory provisions enshrined u/s 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). As a matter of fact it is the appellant-petitioner itself who has admitted in reply to the demand notice (Annexure A-3 to the writ petition) that the respondent-workman had served the management from 19.10.1995 to 24.8.1996 for a period of more than 240 days. He was thus duly engaged. Hence the appellant-petitioner is not justified in claiming that his engagement amounts to back-door entry. Not only this but he was considered by the management for regularisation after his name was sponsored by the Employment Exchange but he was not found suitable, hence asked not to come to duty on 24.8.1996. Once it is established from the own pleadings of the appellant-petitioner that the respondent-workman had worked continuously for a period more than 240 days preceding his oral disengagement, the only course available to the appellant-petitioner was to have

given one month notice in writing to the respondent-workman indicating the reasons thereto or paid wages in lieu of the period of such notice. Besides, the respondent-workman should have also been paid compensation as provided u/s 25-F of the Act. No such course was, however, resorted to and to the contrary the respondent-workman was orally asked not to come to duty w.e.f. 24.8.1996. In such a situation, the issuance of a direction to the appellant-petitioner to re-engage the respondent-workman would have been the only relief liable to be granted in this matter. No other and further view of the matter in the given facts and circumstances could have taken. Above all, there is only a direction to reengage the respondent-workman and nothing beyond it.

4. It was no where the case of the appellant-petitioner that in lieu of re-engagement of the respondent-workman, it was ready to pay him compensation. No such point seems to have even been urged before the learned Single Judge also. Thus it cannot be believed by any stretch of imagination that the case law cited on behalf of the appellant-petitioner has not been appreciated in its right perspective for the reason that the short controversy which has been adjudicated upon by the learned Single Judge was qua the legality and validity of the award whereby in view of the violation of mandatory provisions contained u/s 25-F of the Act, the respondent-workman was held entitled to re-engagement. As a matter of fact the case law cited is not attracted in a situation like the one in the present case where the services of a workman were dispensed with without resorting to the mandatory provisions enshrined under the Act. It is difficult to believe that he was engaged by way of back-door entry or is a case identical to that decided by the Hon'ble Apex Court in the judgment referred to and discussed by the learned Single Judge in the impugned judgment. In view of all the reasons hereinabove, we find no force in the present appeal and the same is accordingly dismissed in limine.