

(2014) 07 P&H CK 0856
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 890 of 2014 (O and M)

B.P.S. Mahila Vishwavidyalaya

APPELLANT

Vs

Mukesh Kumar

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2014) 143 FLR 277 : (2014) 3 LLJ 440 : (2014) LLR 1238

Hon'ble Judges : Jasbir Singh, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Tribhuvan Dahiya, Advocate for the Appellant; B.S. Rathee, Advocate for the Respondent

Judgement

Jasbir Singh, J.—Application is allowed. Written statement filed on behalf of respondent No. 1 is permitted to be taken on record. L.P.A. Nos. 890 of 2014 and 883 of 2014.

This order will dispose of above said two Letters Patent appeals as the common questions of law and facts are involved therein. To dictate order, facts are being taken from L.P.A. No. 890 of 2014. Respondent No. 1-workman, was taken into service in August as Sweeper by respondent No. 3-Principal, Technical Institute Gurukul, Gurukul Bhainswal Kalan, Sonapat. It is submitted that when he was appointed no post was available. Post was not advertised and under the verbal orders of the then Principal, seven workers including respondent No. 1 were taken in service. Their approval for appointment was sought, on 29.1.2007. Above fact is apparent from the document i.e. Annexure P-8. It is the case of respondent No. 1 that his service was terminated on 12.6.2007 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (for short the "Act"). Retrenchment compensation was not paid to him. He raised an industrial dispute. The matter was referred to the Industrial Tribunal-cum-Labour Court for adjudication. Both the parties led their evidence and on analysis thereof, it was found as a matter of fact vide order dated 11.10.2013 (Annexure

P-10) that the workman had completed continuous service of 240 days with the respondent during 12 months preceding the date of termination of his service. It was farther found that termination was ordered without complying with the provisions of section 25-F of the Act. Holding as above, the prayer made by respondent No. 1 was allowed. Reference was decided in his favour ordering his re-instatement with continuity in service and on payment of 50% back wages from the date demand notice was issued by respondent-workman on 4.7.2007.

It is an admitted fact that respondent No. 1 had rendered service for a period of 1-1/2 years. There is nothing on record to show that his service was permanent and further that he was not a daily wager. The above award was challenged by the appellant before this Court by filing Civil Writ Petition No. 4853 of 2014. The writ petition was dismissed affirming the L.P.A. No. 890 of 2014 (O & M) award on 27.3.2014. It was observed by the learned Single Judge that once it has come on record that service of respondent No. 1-workman was terminated without complying with the mandatory provisions of the Act, reinstatement has to be ordered as was done by the Labour Court:

"By placing reliance upon a judgment rendered by this Court in B.S.N.L. Vs. Bhurumal, , Counsel for the appellant states that instead of ordering reinstatement in service with continuity and payment of 50% back wages, lump sum compensation should have been paid to the respondent workman."

2. After hearing learned Counsel for the parties, we are not inclined to affirm the award of the Labour Court ordering that respondent No. 1 be reinstated in service on payment of 50% back wages. It is not in dispute that respondent No. 1 was appointed by Mess Committee and the institute was not in existence. The post was not advertised. Seven workmen including the appellant were taken into service under the verbal orders passed by the then Principal of the institute. Respondent-workman was a daily wager and he had worked only for a period of 1 1/2 year before his service was terminated. His service was terminated in the year 2007. It is not expected that during this period respondent No. 1 was sitting idle and doing nothing towards earning livelihood for his family. Counsel for the appellant has placed reliance upon a judgment of Hon"ble Supreme Court in the case of B.S.N.L. Vs. Bhurumal, , and also in the case of Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, , to say that in such like a situation, payment of compensation is a proper remedy. But the Labour Court and the learned Single Judge ordered reinstatement of service of the appellant.

3. We are satisfied with the arguments raised by learned Counsel for respondent-workman. In the above said judgments, Hon"ble Supreme Court has specifically opined that in the case of daily wager unless the termination is proved to be mala fide, result of unfair labour practice, reinstatement is not only the remedy. Rights of the parties can be settled by ordering payment of compensation in favour of the workman whose service was terminated without complying with the provisions of section 25-F of the Act. In view of above, these appeals are partly allowed and it is ordered that instead of reinstatement in service, let the

compensation amount of Rs. 3.00 lacs each be paid to the respondents-workmen. The amount shall be paid within a period of two months, from today, failing which, respondents-workmen shall be entitled to claim interest @ 8% per annum simple, till such time payment is not made to them.