
(2014) 08 P&H CK 0219
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8434 of 2011(O&M)

Chief Post Master General

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 25-F

Citation : (2014) 08 P&H CK 0219

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Namit Kumar, Advocate for the Appellant; H.P.S. Ghuman, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sandhawalia, J.—Challenge in the present writ petition is to the award dated 25.10.2010 (Annexure P12) whereby respondent No. 2-workwoman has been granted the relief of reinstatement along with full back wages by the Labour Court, Chandigarh.

2. A perusal of the paperbook would go on to show that the case of respondent No. 2-workwoman was that she had worked as a Sweeper on daily wage basis @ Rs. 500/- per month in the Head Office 1, Post Office, Patiala under the administrative control of the Superintendent, Post Office, Patiala Division from 1984 to 1998. Her services were terminated in the month of November, 1998 and fresh candidates had been appointed and retained in service and therefore, she served the demand notice, after a period of 6 years, i.e., on 13.12.2004 (Annexure P1).

3. The defence taken by the petitioner-Department in the reply was that there was no record available in the office showing that the workwoman had worked as part-time Sweeper. Resultantly, the matter was referred to the Labour Court on the same set of allegations, as noticed above and the plea taken was that the

record pertaining to the year 1984 to 1998 was not produced before the Assistant Labour Commissioner. The petitioner-Department resisted the claim on the ground of delay and laches and also denied the relationship of employer-employee and thus, took the plea that retainment of juniors was totally irrelevant. Another plea was also taken that cash-book vouchers, attendance register and muster rolls for the year 1984 to 1998 had already been destroyed.

4. The Labour Court, on the basis of the statement of the workwoman, came to the conclusion that the witness of the Management, who had been directed to come with the record for the period in question, had not got the same on the ground that the documents for the said period had been weeded out. It was noticed that the cash-book was a permanent document and the same had also been destroyed. Accordingly, an adverse inference was drawn against the petitioner-Department and it was held that they deliberately did not produce the relevant records in order to deprive the workwoman the benefits under the Industrial Disputes Act, 1947 (for short, the "Act") as she was an illiterate lady who had worked for more than 14 years with the Management. Reliance was also placed upon the statement of Sh. K.K. Jain, Advocate who was residing near the Post-Office and had deposed that he had seen the workwoman working under the administrative control of the Senior Superintendent, Post Office, Patiala Division. It was also noticed that the witnesses of the Management admitted that there were 4 workers working in the office and accordingly, a direction was issued by the Labour Court to come with the record of the said 4 persons who were working as Sweepers in the Department but even the record of the said 4 persons were not produced. Accordingly, an adverse inference was drawn against the petitioner. The preliminary objection of delay was also rejected on the ground that there is no limitation prescribed under the Act and therefore, it being a beneficial piece of legislation, justice should not be denied to the workwoman only on this ground. Accordingly, reinstatement was directed and it was also held that she would be entitled to back wages, subject to enhanced rates. 5. Counsel for the petitioner has vehemently argued that the workwoman was only a daily wager and that too, on part-time basis and therefore, reinstatement should not have been directed. There was delay of as many as 6 years in issuing the demand notice and reinstatement of a person whose services have been terminated in November, 1998, at this stage, was not justified. He also submitted that the relationship of employer-employee between the parties was never proved and therefore, the Labour Court was not justified in directing reinstatement, in such circumstances, once the Department had specifically denied that the workwoman had worked with them.

6. On the other hand, counsel for respondent No. 2 justified the order of reinstatement and submitted that the award was well reasoned and it was liable to be upheld and an adverse inference had rightly been drawn.

7. After hearing counsel for the parties, this Court is of the opinion that the petitioner-Department is not justified in submitting that the relationship of

employer-employee had not been proved. It is settled principle of law that the initial onus is on the workman. In the present case, it was the categorical case of the workwoman that she had worked from 1984 to 1998. She had also filed an application before the Labour Court for production of records from 01.01.1989 to 01.01.1998, which were being maintained by the Department and which were lying in the Audit Officers, Postal Department, Jalandhar/Kapurthala under the Deputy Director of Accounts. Reference was also made to a detailed representation which she had filed and consideration on the same by the competent authority was also asked for. The original and photostat copies duly attested and complete in respect of daily wagers for the said period were also asked for vide the application dated 07.05.2007 (Annexure P8). In the reply to that application, it was denied that there is any such record available with the offices at Jalandhar/Kapurthala, lying with the Audit Post Office, Postal Department. The Labour Court has already noticed that whatever record was asked to be produced, the Management witness had denied it and took the plea that it has been weeded out. It was noticed that cash-book, which was a permanent document, had also not been produced on account of the fact that it has been destroyed. The details of the 4 workers, who were working as Safai Karamcharies were also directed to be produced but the same were not produced and thus, the Labour Court had rightly drawn an adverse inference against the petitioner-Department.

8. The issue of adverse inference has been discussed by the Apex Court in *R.M. Yellatti Vs. The Assistant Executive Engineer*, in which it has been held that the initial burden lies on the workman that he had completed 240 days and the burden is dispensed with by stepping into the witness-box and especially in cases of daily wagers, there could be no letter of appointment or termination. Once the initial burden was discharged and the record was also asked to be produced, then drawing of adverse inference would depend upon the facts of the said case. Relevant observations read as under:

"17. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings u/s 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving

statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

9. Thus, keeping in view the abovesaid observations and the factual matrix, as discussed above, it is held that the adverse inference was rightly drawn against the petitioner-Department.

10. Regarding the other issue of reinstatement, this Court is of the opinion that reinstatement, at this stage, was not justified. There is no denying the fact that the services of the workwoman were terminated on 30.11.1998. The dispute was raised, for the first time on 13.12.2004 (Annexure P1), by raising the demand notice. The Labour Court has granted back wages without noticing the fact that the demand notice was issued after 6 years. Even otherwise, almost 16 years have elapsed since the relationship of employer-employee has come to an end. In such circumstances, it would not be appropriate to direct reinstatement, at this stage. The Apex Court in *Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh*, has held that the nature of employment, the length of service and the delay in raising the dispute are factors to be taken into consideration by the Labour Court while directing reinstatement, which is not to be automatic. In the present case, this aspect has been missed out by the Labour Court while granting reinstatement. There is no denying the fact that the workwoman's case is that she had worked for 14 years and it is her own case that she was working as a daily wage worker on fixed salary of Rs. 500/- per month. Thus, in such circumstances, compensation would be the adequate relief. Relevant observations read as under:

"26. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee

holding the regular post for the purposes of consequential relief.

XXXX XXXX XXXX

29. In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute."

11. In B.S.N.L. Vs. Bhurumal, it has been held that there is a rationale for shifting towards payment of compensation and accordingly, a sum of Rs. 3 lacs was granted as compensation, instead of reinstatement, to the Linesman who worked from 1987 till 2002, on daily wages. Relevant observations read as under:

"23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

12. In Hari Nandan Prasad & another Vs. Employer I/R to Mangmt. of FCI & another 2014 (3) JT 415, compensation was ordered to be paid for 3 years of service after noticing that there was a time lag of 9 years, in case of appellant No. 1, to raise the dispute, who had been engaged as daily wager and whose services had been terminated 13 years earlier, when the award was passed.

13. Accordingly, keeping in view the abovesaid precedents, this Court is of the opinion that a sum of Rs. 10,000/- can be awarded for each completed years of service, since the workwoman was only drawing Rs. 500/- per month as her own case. Apart from Rs. 1,40,000/- which becomes payable to the petitioner, a sum of Rs. 10,000/- is being granted as litigation costs. Accordingly, a total sum of Rs. 1,50,000/- will be payable by the petitioner-Department, within a period of 2 months, from the date of receipt of a certified copy of this order, failing which,

the same shall carry interest @ 9% per annum, till actual payment.

14. With the abovesaid observations, the award passed by the Labour Court is modified and the writ petition is disposed of in the abovestated terms.