
(1997) 08 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 68 of 1988

Mohinder Singh and Others

APPELLANT

Vs

The Ropar Central Cooperative Bank Ltd. and Another

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1997) 117 PLR 575

Hon'ble Judges : N.K. Kapoor, J;K.K. Srivastava, J

Bench : Division Bench

Advocate : Sarjit Singh and Vikas Singh, for the Appellant; D.V. Sharma, for the Respondent

Judgement

N.K. Kapoor, J.—This order shall dispose of Letters Patent Appeal No. 68 and 73 of 1988 as both the appeals arise out of the order dated 11.1.1988 passed by learned Single Judge in CWP No. 3616 of 1985.

2. This appeal is against the judgment of learned Single Judge dated 11.1.1988 refusing to interfere with the award of the Labour Court dated 27.5.1985.

3. The present appellant-petitioners approached the Labour Court challenging the termination of their services, same being contrary to the provisions of the Industrial Disputes Act. The Labour Court examined the matter in the light of evidence adduced by the workmen as well as by the Co-operative Bank and came to the conclusion that each one of these workmen had, in fact, worked for a period of 230 days to 238 days and that termination of their service is neither justified nor in order. However, while examining as to the relief which will be appropriate in the facts and circumstances of the case, the Labour Court held that as each one of them had been appointed on ad hoc basis, they had not acquired any right to continue in employment and the fact that the Bank made fresh selection after giving due publicity in this regard and also the fact that most of the workmen who had been retrenched participated in this selection, held that it is not a case for ordering of their induction in the job. However, the Labour

Court held that, as per Section 25-F of the Industrial Disputes Act, services of a workman can be terminated by giving him one month's pay or one month's notice in lieu thereof and retrenchment compensation, these workmen will continue in service till the persons recruited through regular selection joins and that each one of the workmen will be paid one month's pay in lieu of notice as retrenchment compensation and also wages till persons through regular selection join service in their place.

4. Feeling dissatisfied with the award of the Labour Court, the present appellant-petitioners assailed the same by filing a writ petition. Learned Single Judge, however, found no ground to vary or reverse the award of the Labour Court and consequently dismissed the writ petition.

5. Challenging the judgment of the learned Single Judge, the counsel argued that the same is unsustainable in law for the reason that the Labour Court as well as the learned Single Judge having come to the conclusion that the termination orders are not valid, yet declined to order reinstatement in service along with back wages. The approach of learned Single Judge is contrary to the decision of the apex Court and the statutory provisions. According to the counsel, once termination order is found to be not justified, there is no option with the Court except to order reinstatement along with back wages. Counsel placed reliance upon the judgments reported as Mohan Lal Vs. Management of Bharat Electronics Ltd., ; and The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, .

6. Counsel for the respondent, on the other hand, argued that the Labour Court on considering the matter in the light of the factual material on record rightly came to the conclusion that the workmen are not entitled to be reinstated as they had been inducted without following proper procedure. Moreover, each one of them had barely worked for 230 days. Thus, in the facts and circumstances of the present case, the Court thought it appropriate to award them compensation in terms of Section 25-F of the Industrial Disputes Act. For almost identical reasons, learned Single Judge too found no substance in the plea advanced by the petitioner-present appellants and so dismissed the writ petition. Since the learned Single Judge has examined the matter from all conceivable angles, ultimate decision taken cannot be faulted simply on the ground that another view is plausible. Lastly, the counsel submitted that even if it be taken that the compensation amount awarded is too meager keeping in view length of their service before termination order was passed, at best such an amount of compensation need not to exceed one year of service. Reliance has been placed on the decision of the apex Court in case reported as Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra, .

7. We have heard learned counsel for the parties, perused the order of the Labour Court as well as judgment of this Court. Factual aspects though not in dispute, yet a brief reference indeed would be appropriate so as to evaluate respective contentions raised by the counsel representing the two sides. It has

come in evidence that each one of the present appellants was appointed on purely temporary basis for 89 days as a Junior Clerk in the time scale of Rs. 210-10-310-12-1/2-400-15-430 plus dearness allowance at the Punjab State Government rates and other allowances admissible under the rules. Their appointment was liable to be terminated without assigning any reason at any time even during the initial period i.e. within 89 days. Labour Court has come to the conclusion that each one of the persons had rendered almost 230 days of service. An order of termination was passed against each one of them and the Bank intended to induct persons by making a fresh selection, retrenched employees too participated and as many as 12 of them were selected and appointed. Thus the present grievance is by the persons who had participated in the selection process but were unsuccessful. The Labour Court, however, came to the conclusion that the termination order is not justified but all the same directed the Bank to compensate them by paying one month's salary in lieu of the notice period as retrenchment compensation. As noticed above, learned Single Judge too declined to interfere in the writ jurisdiction.

8. The short question under scrutiny is whether in the facts and circumstances of the present case, Labour Court was justified in not ordering reinstatement and back wages to the workmen despite having held the order of termination to be not justified. In Mohan Lal's case (supra) the apex Court held that once it is held that the termination of service is void ab initio and inoperative, declaration need to be given to the effect that workman continues to be in service with all consequential benefits, namely, back wages in full and other benefits. However, the Court remitted the case to the Labour Court to make an appropriate award in the light of the findings of this court. Similarly, in Sant Raj and another's case (supra), the Court after holding termination of service of workman to be bad and that workman is entitled to reinstatement, yet granted only enhanced compensation in lieu of reinstatement. Similarly, in The State of Bombay and other's case (supra) on construing the meaning of Section 25F(b) of the Industrial Disputes Act held the requirement prescribed by it is a condition precedent for the retrenchment of the workman and non-compliance with the said condition renders the impugned retrenchment invalid and inoperative. However, in Hindustan Steel Ltd. Rourkela v. A.K. Roy AIR 1970 S.C. 401, the apex Court held that no doubt in some of the decisions of the Supreme Court it has been laid down that where the discharge or dismissal of a workman is not legal or justified, relief which would ordinarily follow would be reinstatement. All the same, the Labour Court has discretion to award compensation instead of reinstatement if circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. Thus, the Labour Court has to exercise its discretion judicially and in accordance with the well recognised principles in that regard. Each case has to be examined carefully to find out whether it is one of those exceptions to the general rule.

9. Whether the present case is an exception or same is to follow the usual pattern i.e. reinstatement with back wages can be examined in the light of

peculiar facts of the case. As noticed above, each one of the appellants were inducted in service as an ad hoc arrangement. Their services were liable to be terminated without any notice by the authority. Thus, per se one can infer that they had not acquired any such right to remain in service. The respondent-Bank with a view to make proper selection advertised the post (which the appellants and like them were holding on ad hoc basis) and permitted them to participate in the selection process. A number of them also came out successful and so were offered employment on permanent basis. The appellants, of course, have raised this dispute when they were not found to be selected. Examined in the context of these facts, action initiated by the Bank could not be termed to be mala fide. Even if it be, yet any violation of the provisions of the Industrial Disputes Act makes the Bank liable for its consequences. The Labour Court came to the conclusion that the termination of services of the employees is not in order as envisaged by Section 25F of the Act. Section 25-F of the Act contemplates issue of one month's notice indicating the reasons for retrenchment as well as compensation on account of service rendered. What amount of compensation would be paid in case reinstatement would not be appropriate, in fact, cannot be quantified. The compensation to be awarded will vary with facts of each case. Precisely for this reason, the apex Court has awarded compensation ranging from with one year of service to few years. In *Ruby General Insurance Co. Ltd.*'s case (supra) held that the reinstatement ordered by the Tribunal would be inexpedient but all the same as the employee served the company for 12 months, the Court awarded one year's salary in lieu of reinstatement as compensation amount. Since in the present case the appellants were afforded an opportunity to seek employment afresh by participating in the selection process for a regular employment, so it would be highly inequitable to order reinstatement. All the same as each one of them have been found to have worked, for 230 days in a year, it would be just and proper to award them compensation in lieu of their claim for reinstatement (as order of termination has been found to be not justified by the Labour Court). Payment of a year's emoluments as compensation would meet the ends of justice. We accordingly accept the appeals, modify the order of the learned Single Judge thus holding that whereas there is no ground to order reinstatement of the appellants, yet on account of infirmity in the order of termination the respondents are directed to pay a year's salary to the appellants as compensation in view of Section 25-F(b) of the Act. This amount, of course, shall be calculated on the basis of monthly salary which each one of them was drawing when their services were terminated. No cost.