

(2014) 11 P&H CK 0179
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19447 of 2012

Parbhagia Van Adhikari Social Forestry	APPELLANT
Vs	
Dayanand and Others	RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Industrial Disputes Act, 1947 — Section 11-A, 12(3), 2, 25, 25-F

Citation : (2015) 1 SCT 712

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Sunil Nehra, Sr. D.A.G, Advocates for the Appellant; Ramesh Goyat, Advocates for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—The instant writ petition is directed against the award dated 20.01.2012 (Annexure P-3) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat in terms of which the termination of the workman/respondent No. 1 has been found to be bad in law and he has been held entitled to reinstatement with continuity of service along with 50% back wages. Mr. Sunil Nehra, learned Senior Deputy Advocate General, Haryana appearing for the petitioner would contend that the Forest Department is not an industry as defined under Clause (j) of Section 2 of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act") and in which department, the workman had been engaged and on this score alone, the impugned award cannot sustain as the Labour Court has exceeded its jurisdiction. It is further contended that the workman had not been appointed on the post in accordance with the rules but was merely engaged as a Labourer on daily wage basis and as such, disengagement from service cannot be construed to be retrenchment under the Industrial Disputes Act. It has further been argued that the workman did not lead any cogent evidence before the Labour Court to substantiate having worked for 240 days" in the preceding 12 months prior to disengagement and as such, the Labour Court has erred in extending the benefit and protection under Section 25-

F of the Act while directing reinstatement.

2. Per contra, Mr. Ramesh Goyat, Advocate appearing for the respondent/workman would submit that a finding having been recorded as regards non-compliance of the provisions of Section 25-F of the Act, reinstatement in service would be the obvious consequence. Counsel would argue that the findings of the Labour Court and the discretion exercised while granting the relief of reinstatement and confining the back wages to 50% would not call for any interference by this Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India.

3. Counsel for the parties have been heard and the case paper book has been perused.

4. The demand notice dated 15.03.2004 has been placed on record at Annexure P-1 and the same would show that the workman had set up a plea of having been engaged as unskilled labourer in the year 1984 at a monthly salary of Rs. 2190/-. His services had been terminated on 03.04.1994 and a settlement had been arrived at under Section 12(3) of the Act dated 11.03.1998 before the Labour and Conciliation Officer, Sonapat and accordingly, he was reinstated in service. Workman claimed to have worked up to 27.04.2000, when his services were terminated verbally without assigning any reasons w.e.f. 28.04.2000 and without complying with the provisions of Section 25-F of the Act. The reply to the demand notice dated 28.10.2005 on behalf of the management has also been placed on record at Annexure P-2 and the same would reveal that it had been pleaded that Forest Department does not fall under the definition of the industry and as such, the workman is not entitled to get any benefit under the provisions of the Act.

5. Even though, in the pleadings, the employer/management did raise a plea that the Forest Department is not an industry, no evidence was produced before respondent No. 2 to show that its functions and activities are akin to inalienable sovereign functions of the State. Such a plea having not been substantiated and pressed before the Labour Court would not be permitted to be raised before the writ Court under Article 226 of the Constitution of India.

6. Before the Labour Court, the workman had deposed in his affidavit Ex. WW1/A as well as while appearing as WW-1 with regard to having initially been engaged in the year 1994 and having worked till 27.04.2000. A categorical plea was taken with regard to having completed continuous service of 240 days" in the preceding 12 calendar months from the date of termination of his service. The workman had summoned WW-2, Sh. Ramphal and who had in turn been directed to produce the record as regards the service particulars. In spite of several opportunities having been granted, such witness did not bring the complete summoned record but only produced the record pertaining to the settlement dated 11.03.1998, whereby the workman had been reinstated. Management witness, Sh. Ashok Kumar, MW 1, deposed in his cross examination that record

prior to the year 1995 had been weeded out. Such management witness, MW 1, however, made an admission that in pursuance to the settlement dated 11.03.1998, the workman had been reinstated with continuity in service and had worked with the department.

7. Workman/respondent No. 1 was a daily wager who had neither been issued an appointment letter nor a termination letter. Management was the custodian of the records. Undoubtedly, the initial onus to prove the fact of having completed more than 240 days" in service in the 12 preceding months from the date of termination was on the workman. Towards discharging such onus, the workman had summoned the concerned witness and who in turn had been directed by the Labour Court to produce the records. Stand taken on behalf of the management was that record prior to 1995 had been weeded out. However, the workman having been retrenched w.e.f. 28.04.2000, the relevant period to see completion of 240 days" of service was between 01.05.1999 to 28.04.2000. Records pertaining to such period in the nature of attendance register, muster rolls, cash book, payment vouchers etc. i.e. the best and relevant evidence were withheld by the management. This Court does not find any infirmity as regards Labour Court having drawn an adverse inference against the management and have taken a view that the workman did complete 240 days" in the preceding 12 months from the date of termination and as such, there being a non compliance of Section 25-F of the Act. Findings of the Labour Court to such effect are upheld.

8. The question that would now arise for consideration is as to whether the workman/respondent No. 1 was entitled to the relief of reinstatement by virtue of his termination having been held to be illegal on account of non compliance of Section 25-F of the Act?

9. It is by now well settled that discretion has been conferred upon the industrial Courts under Section 11-A of the Act but despite thereof, the relief of reinstatement should not be granted automatically only because it would be lawful to do so. Grant of such relief would depend on a number of factors, such as nature of appointment, availability of work, whether the appointment was in terms of the rules and statutory provisions, delay in raising the industrial dispute etc.

10. In Bharat Sanchar Nigam Ltd. Vs. Man Singh, , the Hon"ble Supreme Court had held that when termination is set aside on account of violation of Section 25 of the Act, it is not necessary that relief of reinstatement be also given as a matter of right. In a recent judgment of the Hon"ble Apex Court in B.S.N.L. Vs. Bhurumal, , the earlier view taken by the Court in Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, was approved. In Jagbir Singh"s case (supra), it had been held that in the recent past, there had been a shift in the legal position and the Court had consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation, even though termination of an employee was in contravention of the prescribed procedure. Compensation instead of

reinstatement was held to be the prudent relief to meet the ends of justice.

11. Adverting back to the facts of the present case, concededly, the workman/respondent No. 1 had been engaged and worked as a daily wager. His engagement was not in pursuance to any regular selection process having been followed which may be taken to be in conformity with the constitutional scheme of equality as per Articles 14 and 16 of the Constitution of India. Termination of the workman had taken place in the year 2000 i.e. 14 years back. Concededly, there is a delay of four years in having raised the industrial dispute as the date of demand notice is 15.03.2004. All such relevant aspects have been overlooked by the Labour Court while granting the relief of reinstatement with continuity of service along with 50% back wages. Reference at this stage may also be made to the decision of the Hon"ble Supreme Court in Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, , wherein the workman had raised the industrial dispute after six years of termination and it was held that the discretion exercised by the Labour Court in directing reinstatement of the workman was flawed and compensation in lieu thereof had been awarded. Relevant observations are contained in paras 20 and 21 of the judgment and read as follows:

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh (supra) that 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 termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work charged employee for a period from 01.11.1984 to 17.02.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.02.1986. The workman raised the industrial dispute in 1992, i.e., after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

12. In the facts of the present case, even while upholding the findings recorded by the Labour Court as regards non compliance of the provisions of Section 25 of

the Act and while following the dictum laid down by the Hon''ble Supreme Court in Bhurumal''s case (supra) and Mohan Lal''s case (supra), it is held that the Labour Court has erred in granting the relief of reinstatement. Compensation in lieu of reinstatement to the workman/respondent No. 1 is held to be the appropriate relief under the given fact situation.

13. In the case of Bhurumal (supra), the Hon''ble Supreme Court was seized of situation where termination of the workman had taken place more than 11 years back and he had claimed to have worked for a period of 15 years. The Hon''ble Supreme Court had awarded the compensation of Rs. 3 lacs. Following such judicial precedent, this Court is of the view that the present workman/respondent No. 1 having worked as a daily wager from 1984 to the year 2000, the ends of justice would be met upon being awarded compensation of Rs. 3 lacs. For the reasons recorded above, the instant writ petition is partly allowed. The impugned award dated 20.01.2012 (Annexure P-3) is modified to the extent of denying to the workman/respondent No. 1 the relief of reinstatement and by awarding Rs. 3 lacs compensation in lieu thereof. Let such payment be made and released to the workman within a period of 8 weeks from today, failing which, he would be entitled to interest at the rate of 8% per annum.

Petition allowed in the aforesaid terms.