
(2014) 11 P&H CK 0163
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 20632 of 2012

Ramesh Kumar

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal and Labour Court
and Others

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25-F, 25-H

Citation : (2015) 1 SCT 716

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Kamal Sharma, Advocates for the Appellant; Sunil Nehra, Senior Deputy Advocate General, Advocates for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—The petitioner-workman has approached this Court by filing the instant petition impugning the award dated 20.4.2012, Annexure P4, passed by the Presiding Officer, Industrial Tribunal and Labour Court, Union Territory, Chandigarh whereby while answering the reference in his favour, relief of compensation of Rs. 30,000/- has been granted, but he has been denied reinstatement in service. Learned counsel appearing for the petitioner would submit that the workman had been appointed as a Driver in the office of Director, Secondary School Education, Haryana since redesignated as Director, School Education, Haryana, on consolidated salary, on 1.6.2005 and had worked till 31.3.2006. It is contended that finding having been returned by the Labour Court as regards non-compliance of Section 25F of the Industrial Disputes Act (for short "the Act") on account of termination of the services of the workman without any notice nor retrenchment compensation, the relief of re-in-statement should have been granted. It has further been argued that the Labour Court had noticed the factual position as regards two persons, namely, Satish Kumar and Mandeep having been appointed as Drivers on the same vehicles which was earlier being driven by the present petitioner and as such, since the petitioner had not been given an opportunity in the capacity of a retrenched employee to

be reengaged as Driver, there had been a clear-cut violation of Section 25-H of the Act. Learned counsel would argue that a finding with regard to violation of Section 25-H of the Act has not been returned by the Labour Court and as such, a grave error had been committed. In the alternative, submission has also been raised as regards the compensation of Rs. 30,000/- awarded by the Labour Court to be on the lower side. Towards such submission, reliance has been placed upon the decision of the Bharat Sanchar Nigam Ltd. Vs. Man Singh, wherein the workman who was on daily wages had been awarded compensation of Rs. 2 lacs on account of non-compliance of Section 25-F of the Act and wherein the workman had rendered service for a period little more than 240 days.

2. Per contra, learned State counsel would support the award by submitting that the same is well-reasoned and passed upon due appreciation of evidence adduced on record and would submit that the workman having been engaged under contractual basis and on a consolidated salary would not be entitled to the relief of reinstatement as his tenure of engagement was very short.

3. Learned counsel for the parties have been heard.

4. The Labour Court in the award dated 20.4.2012 has recorded a finding of fact as regards transgression of the provisions of Section 25-F of the Act. It has been recorded that the workman had completed more than 270 days with notional breaks of 1, 4 and 6 days only in the preceding 12 months taken from the date of termination. It has further been held that the appointment letter dated 1.6.2005 and subsequent letters of extension in service on the post of Driver were signed by the Deputy Director, Literacy Cell for Director Secondary Education, Haryana. It was further noticed that there was no post of Driver in the State Literacy Mission and as such, engagement of the workman as Driver was under the Director of Secondary Education, Haryana and as such, relationship of employee and employer between the parties stood proved. No retrenchment compensation had been paid to the workman and finding of noncompliance of Section 25-F of the Act is based on due appreciation of evidence and for cogent reasons.

5. In any case, such findings as regards non-compliance of Section 25-F of the Act had not been assailed at the hands of the employer. This Court would proceed with the same to be well founded.

6. As regards two other persons, namely, Satish Kumar and Mandeep having been engaged as Drivers subsequently and the workman having not been given an opportunity to be reengaged, the Labour Court has chosen a path of balancing the equities holding that with the passage of time such two employees have also assumed legal rights and as such, it would not be just and equitable to get the post of Driver vacated so as to adjust the present petitioner-workman.

7. Even such discretion exercised by the Labour Court does not call for any interference. The Hon'ble Supreme Court in Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, had held that insofar as wrongful

termination of daily wages workers are concerned, the consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. It is further held that where the length of engagement has not been long, award of reinstatement should not follow and rather relief of compensation would be a prudent course of action.

8. In view of the reasons recorded above, this Court does not find any infirmity in the impugned award dated 20.4.2012, Annexure P4, vide which the relief of reinstatement has been denied to the workman and compensation instead, has been awarded in the light of the tenure of engagement of the present petitioner as Driver.

9. However, this Court is of the considered view that the quantum of compensation awarded i.e. Rs. 30,000/- deserves enhancement. In the case of Man Singh (supra), the daily wages workman was awarded a compensation of Rs. 2 lacs on account of non-compliance of Section 25-F of the Act and upon having worked a little more than 240 days but the facts were peculiar. The Labour Court in the facts of that case had rendered award directing reinstatement. The award of reinstatement was upheld even before the High Court as the writ petitions filed by the Department impugning the award had been dismissed. However, the Hon"ble Supreme Court had intervened by distinguishing the rights of daily wager who does not hold a post as opposed to a permanent employee and had converted the relief of reinstatement to that of compensation and by awarding Rs. 2 lacs. In the case of Gitam Singh (supra), the workman had worked for a period of almost eight months and compensation of Rs. 50,000/- had been awarded.

10. In the considered view of this Court, compensation of Rs. 1 lac to the petitioner-workman would meet the ends of justice. Ordered accordingly. Such payment be made to the petitioner within eight weeks from today, failing which the same shall carry interest @ 8% per annum. But for such modification as regards enhancement of compensation from Rs. 30,000/- to Rs. 1 lac, the impugned award dated 20.4.2012 is upheld and the writ petition is dismissed.