

(2014) 09 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15472 of 2014

State of Punjab

APPELLANT

Vs

Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25-F, 25-G, 25-H

Citation : (2015) 1 LLJ 64 : (2015) 1 SCT 773

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Rupam Aggarwal, Deputy Advocate General, Advocates for the Appellant; Tarun Kumar Singla, Advocates for the Respondent

Judgement

Gurmeet Singh Sandhawalia, J.—The challenge in the present writ petition is to the award dated 16.5.2013 (Annexure P1), whereby the respondent No. 2-workman has been given the relief of reinstatement with continuity of service and 30% back wages from the date of his demand notice i.e. 29.4.2003. Perusal of the paper-book would go on to show that the claim of respondent No. 2-workman was that he was employed as Mali-cum-Chowkidar with the petitioner-department from 1.6.1995 on a permanent job at the rate of Rs. 1,350/- plus other allowances per month. His services were terminated with effect from 30.6.1996 by the petitioners without any notice, charge sheet, enquiry or compensation and his juniors continued to work. Accordingly, it was alleged that having worked for more than 240 days, the petitioners had not complied with Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (In short "the Act").

2. The defence of the petitioner-department was that claim of the respondent-workman was time barred and he was appointed on daily wages against muster roll and appointment was not as per Rules and he worked as Chowkidar under different schemes and worked only for 152 days and had not completed 240 days. The workman examined himself as WW. 1, whereas Darshan Singh, Junior Engineer, Water Supply and Sanitation, Sub Division No. 2, Fazilka was examined

by the petitioner department as M.W. 1. The muster roll produced by the workman Ex. W.2 to Ex. W.22 was scrutinized by the Labour Court and the finding has been recorded that he was terminated on 30.6.1996 and he had completed 275 days in the calendar year. Reliance was placed upon the cross-examination of the Management witness, who had admitted that the workman had completed 240 days with the Management as he had worked in different areas as per the requirement. It was, accordingly, held that in view of the admission that new persons were engaged and the workman was not called for the job and no notice or compensation had been given, the termination was illegal, null and void and the workman had a right to challenge his termination.

3. The question of delay was answered by granting continuity of service with 30% back wages from the date of demand till joining of his duties and the impugned award was passed.

4. Counsel for the petitioner has vehemently submitted that there was a delay and he was only a daily wager and his reinstatement, at this stage, was not justified.

5. Counsel for the respondent workman, on the other hand, submitted that not only violation of Section 25-F of the Act was committed but also of Section 25-G and 25-H of the Act as the mandatory provisions had not been complied with and under the Act, the issue of delay would not stand in his way in view of the judgment of the Apex Court in *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, . Reliance was also placed upon the observations of the Apex Court in *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, , and other judgments to submit that the relief could be suitably moulded and has been done so by limiting the back wages to 30% from the date of demand notice i.e. 29.4.2003.

6. After hearing counsel for the parties, this Court is of the opinion that the Labour Court has failed to take into consideration the fact that the workman was only an employee on daily wage basis and not a regular employee. It is his own case that his services had been terminated on 30.6.1996 and his juniors were retained. If that was so, it is necessary for him to agitate his grievance expeditiously. After a period of as long as seven long years, he did not raise any grievance and suddenly became wiser about his rights under the Act and raised the demand notice on 29.4.2003. The said delay of seven long years has not been suitably explained.

7. In the similar circumstances, the Apex Court in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, , held as under:

"6. Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act it is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers

in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time When the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent.

7. In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. He availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power under section 10 of the Act and there being no industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question."

8. The Apex Court in *Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh*, has observed that the nature of appointment, the length of service and the delay in raising industrial dispute are the relevant factors which have to be taken into consideration before ordering reinstatement. The 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.

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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."

9. The said view of delay and laches has further been followed in Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, , wherein the judgment of the Apex Court in Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another (supra) has also been discussed. The relevant observations read as under:

"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.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs. 1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.

23. The appeal is partly allowed to the above extent with no order as to costs."

10. The view in Assistant Engineer, Rajasthan Development Corporation and Another v. Gitam Singh (supra) has further been followed by the Apex Court in B.S.N.L. Vs. Bhurumal, , wherein it has been held that only in the case of victimization or where juniors have been retained, then only reinstatement is to be ordered and the length of service of the workman has also to be taken into consideration, while considering the claim of his daily wage. Accordingly, compensation had been granted in the said case. The 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.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: Secretary, State of Karnataka and Others Vs. Umadevi and Others, . Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation

and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

11. In Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another, , the said principles were reiterated.

12. Accordingly, keeping in view the above settled position, the amount of said award is liable to be modified to the effect that instead of reinstatement with continuity in service and back wages to the extent of 30%, amount of compensation is liable to be awarded. Keeping in view the fact that the respondent workman had only worked for a period of one year and the relationship came to an end 18 years back, this Court is of the opinion that a sum of Rs. 75,000/- would be an adequate amount of compensation which should be payable to the workman as admittedly, he had completed 240 days. The above said judgments have also dealt with the principles of compensation as well as awarding similar amounts for one year of service. Accordingly, the award is set aside and the writ petition is allowed and in lieu of the relief granted, consolidated amount of Rs. 75,000/- shall be awarded for redressal of his grievance, as he has been litigating for the last 11 years. The said amount be paid to the workman within a period of two months from the date of receipt of a certified copy of this order, failing which he shall be entitled for interest @ 8% per annum from today.