IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.20528 of 2012 (O&M)

Reserved on:30.09.2014

Date of decision: 20.11.2014

Om Parkash ... Petitioner

Vs.

The Presiding Officer & others ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Anurag Jain, Advocate for the petitioner.

Mr. Sunil Nehra, Sr. DAG, Haryana.

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TEJINDER SINGH DHINDSA, J.

Om Parkash, petitioner/workman has filed the instant writ petition impugning the award dated 09.05.2012 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar, whereby even though his termination has been held to be bad in law but he has been awarded compensation of Rs.1,60,000/- in lieu of reinstatement.

Mr. Anurag Jain, learned counsel appearing for the workman/petitioner would vehemently contend that the findings having been returned by the Labour Court as regards non compliance of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act"), the relief of reinstatement must follow. In support of such contention reliance has been placed upon the judgments of the Hon'ble Supreme Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation, 2010 (1) SCT 725; Devinder Singh Vs. Municipal Corporation, Sanaur, 2011 (3) SCT 139* and *Anoop Sharma Vs. Executive Engineer, Public Health,*

Division No.1, Panipat, 2010 LLR 627. Counsel has also contended that a junior to the petitioner namely Subhash Chander S/o Shri Ram had been retained in service and as such, the principle of "last come first go" had been given a go bye and as such, there was violation of Section 25-G of the Act and on which issue, the Labour Court has not recorded the correct finding. It is further argued that the Presiding Officer has denied the relief of reinstatement on the basis that the workman did not possess the requisite qualification for the post and such reasoning cannot sustain as for non compliance of the provisions of Section 25-F of the Act, reinstatement could not have been declined on such score. Counsel has also placed heavy reliance upon an additional affidavit dated 26.02.2013 of the Joint Director (Admn.), Department of Sports and Youth Affairs, Haryana, Panchkula, wherein instances have been furnished of a number of Groundmen presently working in the Department of Sports and Youth Affairs, Haryana and who also were illiterate and did not possess the requisite qualification for the post. Counsel would submit that under such admitted fact situation, the petitioner/workman is vested with a right to reinstatement with continuity in service.

Per contra, learned State counsel would submit that the petitioner had been engaged as Groundman on daily wages and was being paid as per DC rates. It is further submitted that the claim of the petitioner seeking regularization in service had been repeatedly rejected by passing specific orders and challenge to the same has not even been accepted by this Court. It is further contended that the petitioner did not possess the requisite educational qualification prescribed for the post of Groundman under the statutory service rules and as such, the Labour Court has rightfully denied

the relief of reinstatement.

Counsel for the parties have been heard.

Brief facts would require notice. Petitioner was engaged as Groundman in the Sports and Youth Affairs Department, Haryana w.e.f. 28.02.1991 on wages fixed by the Deputy Commissioner from time to time. His services were terminated on 01.03.1995. Industrial dispute having been raised, a compromise was arrived at with the employer/management and he was taken back on duty upon having agreed to relinquish his claim for backwages. Petitioner filed CWP No.10552 of 2002 praying for issuance of directions to take a decision on his representation dated 11.02.2002, wherein he had claimed the benefit of regularization of his service. Such writ petition was disposed of by this Court on 12.07.2002 with a direction to the department to decide his representation within a period of three months. Vide order dated 24.08.2002, representation of the workman/petitioner was dismissed on the ground that his claim was not covered as per relevant policy/instructions as also on the ground that he did not possess the requisite educational qualifications prescribed for the post which was 8th class pass whereas he was illiterate. Vide order dated 26.08.2002, services of the petitioner were terminated. Petitioner then filed CWP No.15106 of 2002 impugning the order dated 24.08.2002 declining the relief of regularization in service as also the order dated 26.08.2002 whereby his services had been terminated. During the pendency of such writ petition, petitioner was taken back into service. However, vide order dated 19.08.2004, this Court issued directions to consider the claim of the petitioner as regards regularization under the new policy issued by the State Government dated 01.10.2003. Vide order dated 23.11.2004, claim of the

petitioner seeking regularization of service was yet again rejected and his services were dispensed with vide order dated 01.12.2004. The petitioner then filed CWP No.19352 of 2004. In such writ petition operation of the order of termination was stayed and directions were issued to the respondent/department to consider the case of the petitioner for regularization in the light of the Division Bench judgment of this Court in Kanta Gandhi Vs. State of Haryana, 1997 (4) RSJ 760. Order dated 11.11.2005 was passed by the department rejecting the claim of the petitioner for regularization of his service yet again on the ground that he does not fulfill the educational qualifications required for the post. Such order was challenged by the petitioner by filing CWP No.18120 of 2005 and which was dismissed as withdrawn on 21.09.2006. Vide order dated 01.02.2007, services of the petitioner were terminated after allegedly complying with the provisions of Section 25-F of the Act. Even such order of termination dated 01.02.2007 was impugned by the petitioner by filing CWP No.3298 of 2007 and which was dismissed as withdrawn on 05.11.2007 by granting liberty to avail the alternate remedy. Thereafter the petitioner/workman raised an industrial dispute by filing demand notice dated 05.02.2008 and upon conciliation having been failed, matter was referred to the Labour Court for adjudication of the dispute and which has led to the passing of the impugned award dated 09.05.2012 (Annexure P-1).

Perusal of the award would reveal that a finding of fact has been recorded as regards due compliance of Section 25-F (a) on account of the workman having been paid Rs.2730/- as salary in lieu of notice period. However, Labour Court has held that there has been non compliance of Section 25-F (b) inasmuch as the retrenchment compensation paid to him

amounting to Rs.14781/- was deficient and had not been calculated as per law. As regards violation of Section 25-G of the Act, a view was taken that no parity can be granted to the workman with Sh. Subhash Chander as his services had been regularized as per directions of this Court in CWP No.14598 of 2004 decided on 05.09.2005 (Ex.W-7) and such relief having been granted to afore noticed Subhash Chander as he fulfilled the requisite qualifications for the post. The claim of the present petitioner/workman was distinguished on account of his being illiterate and as such, violation of Section 25-G of the Act was held to be not proved.

This Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India does not find any infirmity in the view taken by the Labour Court as regards non compliance of Section 25-F of the Act as also with regard to there being no violation of Section 25-G of the Act. As such, the view of the Labour Court in holding termination of the service of the petitioner/workman being vitiated on account of non compliance of Section 25-F of the Act is upheld.

The submission raised by counsel for the petitioner as regards grant of relief of reinstatement as opposed to compensation against the backdrop for having rendered almost 16 years of service would now require consideration.

The question with regard to a workman having worked as a daily wager and his termination having been held to be in contravention of Section 25-F of the Act and whether directions made by the Labour Court to the employer for reinstatement with continuity of service being illegal came up for consideration before the Hon'ble Supreme Court in *Assistant Engineer, Rajasthan Development Corporation & another Vs. Gitam*

Singh, 2013 (2) SCT 30 and it was held as under:

"In our view, Harjinder Singh and Devinder Singh do not laid 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 a long line of cases had held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such case would be inconsonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view 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."

The judgment in *Gitam Singh's case (supra)* has been followed in *BSNL Vs. Bhurumal, 2014 (7) SCC 177*. In such case, the Court was seized of a situation wherein the workman was a Lineman on daily wage basis with the management and had worked from 1987 till April, 2002 and whose services had been terminated. Reinstatement was directed by the Central Govt. Industrial Disputes Tribunal, Chandigarh (in short CGIT) on 11.01.2011 which was upheld by the Single Bench and Division Bench of this Court. However, the Apex Court intervened and held that there was a shift in legal position and reinstatement with backwages was not automatic even if it was in contravention of the prescribed procedure and accordingly, compensation was directed to be paid due to the fact that he would have no right to seek regularization in view of the Constitutional Bench judgment in

Secretary, State of Karnataka Vs. Umadevi, 2006 (4) SCC 1. In Bhurumal's case (supra), it was held as follows:

- *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:State of Karnataka v. Uma Devi (2006) 4 SCC (1). 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."

In the present case, even though the petitioner had rendered daily wage service of almost 16 years, yet his claim for regularization in service had been rejected repeatedly. Such orders of rejection have even been upheld by this Court by virtue of number of writ petitions filed by the petitioner/workman having been dismissed. Counsel for the petitioner would himself concede that he is not staking any claim as regards regularization in service.

Concededly, the petitioner was engaged as a daily wager. Such engagement was not in pursuance to any regular selection process having been followed which would seen to be in conformity with the constitutional scheme of equality under Articles 14 and 16 of the Constitution of India. Termination of the petitioner had taken place in the year 2007 i.e. 7 years back. He in any case has no right to claim regularization in service.

As such, claim raised on behalf of the petitioner/workman seeking the relief of reinstatement on account of non compliance of the provisions of Section 25-F of the Act instead of compensation would stand negated in the light of the observations of the Hon'ble Supreme Court made in *Bhurumal's case (supra)* and reproduced herein above. This Court does not find any infirmity in the judicial discretion exercised by the Labour Court while passing the impugned award dated 09.05.2012 (Annexure P-1) while denying to the petitioner reinstatement with continuity of service and resorting to awarding compensation in lieu thereof.

The petitioner/workman cannot derive any mileage from the

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additional affidavit dated 26.02.2013 of the Joint Director (Admn.),

Department of Sports and Youth Affairs, Haryana and placed on record and

by citing instances of certain Groundmen who are still working and are

illiterate. Concededly, the petitioner does not fulfill the qualifications for

the post of Groundman as per the statutory service rules. Relief of

reinstatement under such circumstances to a daily wager who otherwise has

lost the right of regularization in service would not be appropriate.

This Court is, however, of the view that the compensation of

Rs. 1,60,000/- awarded to the petitioner/workman by the Labour Court is on

the lower side. Petitioner had rendered almost 16 years of service as daily

wager. In the case of Bhurumal (supra), the daily wager Lineman had

claimed to have rendered 15 years service and was awarded compensation

of Rs.3 lacs by the Hon'ble Apex Court in lieu of reinstatement.

As such, while dismissing the instant writ petition and while

upholding the impugned award dated 09.05.2012 (Annexure P-1) the

compensation of Rs.1,60,000/- awarded is enhanced to Rs.3 lacs. Let such

enhanced compensation be paid and released to the petitioner/workman

within a period of 8 weeks from today, failing which, he would be entitled

to interest at the rate of 8% per annum.

But for such modification in the impugned award as regards

enhancement in compensation, the writ petition is dismissed.

November 20th, 2014.

(TEJINDER SINGH DHINDSA) JUDGE

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Note:

Whether referred to the Reporter?

Yes