

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.15705 of 1994 (O&M)

Date of Decision: 7.12.2015

Block Development and Panchayat Officer, UT, Chandigarh
..... Petitioner

Versus

Presiding Officer, Labour Court, UT Chandigarh and another
..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.A.P.Setia, Advocate for the petitioner

None for respondent no.2

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The Labour Court, UT Chandigarh has answered Reference No.78 of 1991 in favour of the workman by assigning reasons on the moot point as follows:-

“The worker claims that she was appointed on 14th March, 1988 the fact which is not denied by the respondent specially in the written statement. Further the worker claim she worked upto 14th May, 1990 as stated by her. The plea of the management is that she worked only upto 19th July, 1989. The plea of the Management is falsified from the entries in despatch register Exhibvit W-2 and Exhibit W-

3, Exhibit W-2 are the entries in the despatch register dated 12th March, 1990 and Exhibit W-3 are the entries from register dated 19th February, 1990. The worker claim that these entries were in her hands. The other plea of the management as the worker was not appointed as clerk but was appointed as a beldar is also falsified from these entries because the entries show that she was working as clerk. Even if it be assumed that the worker worked only upto 19th July, 1989, she had completed more than 240 days from 14th March, 1988 to 19th July, 1989. The plea of the Management that the worker left the job of her own on 19th July, 1989 is also falsified from the entries in the despatch register Exhibit W-2 and Exhibit W-3. The worker has thus proved that she had worked for more than 240 days and her services have been terminated without any notice and payment of retrenchment compensation. The termination cannot be sustained. The issue is decided in favour of the workman and against the management.”

2. The Presiding Officer, Labour Court, UT Chandigarh has considered the evidence, weighed it, appreciated it and has taken the view as above. The reasoning cannot be faulted as there is no valid ground found to upset the same. If discretion has been exercised judiciously and judicially in reinstating

the workman to service and granting full back-wages to him after holding that the termination order was illegal, then it cannot be said that the view is perverse, irrational or a flawed one or that no reasonable person would have taken the view. It is argued that reinstatement is not automatic which is also true. But the principle has to be applied by the Labour Court judiciously keeping in view the totality of facts and circumstances of the case on the evidence since it the repository of authority and this Court does not review judicially the work of Labour Court as though it were sitting in appeal against the award of the Labour Court to substitute its opinion to that of the Labour Court. The restrictions placed in exercise of jurisdiction by this Court under Articles 226 of the Constitution of India has been explained by the Supreme Court in *Syed Yakooob v. K.S. Radhakrishnan*; AIR 1964 SC 477 and Article 227 in *Surya Dev Rai v. Ram Chander Rai*; (2003) 6 SCC 675.

3. Learned counsel for the petitioner relies on *B.S.N.L. vs. Bhurumal* (2014) 7, SCC 177 to submit that the award deserves to be interfered with. I am afraid, that is not the ratio in *Bhurumal*, *supra*. No absolute rule can be laid down in labour law as each case depends on its own facts and one fact here or there can make a vital difference and change the course of relief. On the other hand, the exposition of law in *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.*, (1979) 2 SCC 80 as applied in the recent judgments of the Supreme Court starting from *Harjinder Singh vs. Punjab State Warehousing Corporation*, (2010) 3 SCC 192, *Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)*, (2010) 5 SCC 497, and *Devinder Singh vs. Municipal Council, Sanaur*, (2011) 6 SCC 584, *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others*, (2013) 10 SCC 324, *Jasmer Singh vs. State of Haryana and Another*, (2015) 4 SCC 458 and *Tapash Kumar Paul*

v. B.S.N.L. & Another, AIR 2015 SC 357 are cases in point which are in favour of the respondent.

4. Learned counsel for the petitioner submits that the respondent serves as Home Guard volunteer in UT, Chandigarh since 23rd July, 1990. It is not known whether the engagement is full time or casual and amounts to 'gainful employment' in the sense known to labour laws. In case the writ petition is dismissed and the award is upheld, the respondent-workman would be free to opt whether to continue in her current status or to exercise the award. I find no fundamental flaw in law and fact in the impugned award and neither is there error apparent on the face of the record vitiating it.

5. For the reasons recorded above, the writ petition is dismissed and interference is not warranted.

(RAJIV NARAIN RAINA)
JUDGE

7.12.2015
MFK