

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16068 of 1993

Date of Decision: 30.11.2015

Ramesh Kumar

... Petitioner

Versus

Punjab Roadways, Pathankot and another

... Respondents

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

Present: Mr. Prateek Mahajan, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. Mr. Mahajan appearing for the workman submits that three awards were passed by the Labour Court, Gurdaspur on June 01, 1993. The references were accepted to the extent that reinstatement was awarded for illegal termination but back wages were denied altogether to the three workers employed by the same management, the respondent. In two of the cases, the writ petitions have been allowed by this Court granting in addition to reinstatement the full back wages on the ground that each one of them raised industrial disputes by serving a notice for demand for justice on the employer State within a few months of the illegal termination. It transpires that though the dispute was raised without delay the appropriate Government took seven years to refer the dispute for adjudication to the Labour Court, Gurdaspur. This delay cannot be attributed to the workman to

deny back wages to them on the premise that in several judgments monetary relief has been restricted to run from the demand notice. This principle has been evolved by courts on the fault theory where workers raise disputes belatedly and because the Industrial Disputes Act, 1947 ("the Act") does not provide any limitation for raising disputes under section 2-A read with section 10 (1) (c) of the Act then in judicial thinking it is fashioned that the employer cannot be saddled with financial liability for no fault of it. But the principle does not apply to cases where the demand has been raised within reasonable time and without delay and laches and, therefore, the Labour Court fell in error in denying monetary relief altogether on the erroneous assumption that there was delay in raising the dispute. It is this factual aspect which has been considered in the other two cases by this Court and relief of full back wages has been granted to the workman against the State.

2. In the main, the Labour Court fell in error in applying the ratio in **Punjab Agro Industries Corporation Ltd. vs. Presiding Officer, Labour Court, Union Territory, Chandigarh**, 1993(2) SCT 169 which is a case where the workman had raised the dispute after enormous delay.

3. Mr. Mahajan submits that the law in **Sukhwinder Kaur vs. Punjab Roadways, Pathankot**, 1995 (1) RSJ 610; 1994 (4) SCT 268 is the correct position in law which ought to have been applied by the Labour Court since the time taken by the Government in making a reference cannot be seen as an obstacle in the way of the workman entitling him to back wages. Moreover, the rule that ordinarily back wages follow reinstatement rallies on the Full Bench decision of this Court in **Hari Palace, Ambala City vs. The Presiding Officer, Labour Court & another**, ILR 1979

(P&H) 243.

4. In view of the above legal position, there is no escape except to set aside the award of the Labour Court and bring it in tune with the identical cases involving the same employer but three different workman similarly circumstanced as in CWP No.15774 of 1993, *Surinder Kumar vs. Punjab Roadways and another* decided on August 05, 2015 on the same lines.

5. As a result, the writ petition is allowed. The award of the Labour Court to the extent it denies back wages is set aside. The petitioner is held entitled to full back wages from the date of illegal termination. This is also in consonance with the law laid down recently in **Fisheries Department, State of U.P. vs. Charan Singh**, (2015) 8 SCC 150 where the Supreme Court has emphatically held that when the termination is illegal and *void ab initio*, back wages will follow irrespective of the passage of time. Hence, the back wages be computed by the respondents and paid to the workman within three months from the date of receipt of certified copy of this order failing which it will earn 18% interest till realization. The petitioner shall entitled to costs of this litigation quantified at Rs.10,000/-.

(RAJIV NARAIN RAINA)
JUDGE

30.11.2015
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