

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4403 of 1994 (O&M)
Date of Decision: 08.12.2015

Madan Singh

... Petitioner

Versus

The Labour Court Bhatinda
and others

... Respondents

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

Present: Mr. T.S. Sidhu, Advocate,
for the petitioner.

Mr. S.S. Brar, Advocate,
for Respondent-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 has held that the termination was not in order though it was justified. In order to reach a finding on justification, the Court has relied on a decision of this Court rendered on August 06, 1992 in CWP No.17628 of 1991 wherein the learned Single Judge of this Court has observed as follows:-

"I have held in CWP No.5696 of 1986 (Prem Chand versus Presiding Officer L.C. Chandigarh and another) decided on 25th January, 1991 that even if there may be any technical violation of Section 25 F of the Act by the management, that would not in all cases entitled the workman to the relief of reinstatement, unless a finding is also given by the Labour Court that the retrenchment was not justified. Take for instance the some employees in an establishment have really become surplus and the

management has justification in retrenching them. However, while retrenching, the provisions of section 25F of the Act are not strictly complied with as few rupees are paid less as compensation. Would under these circumstances, reinstatement be the proper relief. According to me would be too much to reinstate such a workman even though retrenchment was justified. Under these circumstances some other relief like the compensation may be given depending upon the circumstances of the case.”

2. The Labour Court has noticed that the management had complied with the provisions of section 25-F (a) of the Industrial Disputes Act, 1947 (“the Act”) inasmuch as notice was served on the workman along payment of one month's wages in lieu of notice but pre-condition in section 25-F (b) of the Act was not complied with. On these premises, the Labour Court has held that no case for reinstatement is made out but there is according to it undoubtedly a case for other relief available in the form of compensation in lieu of reinstatement. However, in the view of this Court the Labour Court fell in error in failing to cull out the true ratio in the aforesaid writ petition and applied the ruling blindly to the facts of the present case. There was no evidence worthy of credit to hold that the termination was justified and this finding is in the nature of *ipse dixit* of the Labour Court and is, therefore, not sustainable in law.

3. The petitioner had worked as a Chowkidar in a godown maintained by the employer PUNSUP. In the written statement filed by the management it has been explained that due to shifting of wheat stock from the godown where the workman was employed for watch and ward duties the requirement of daily wage Chowkidars had fallen and more than one daily wage Chowkidar had to be retrenched on account of being rendered

surplus. The retrenched workers were paid one month's pay in lieu of notice and compensation. This defence is primarily based on the deposition of Gurcharan Singh, Senior Assistant produced by the Management appearing as MW-1 the material part of which is recorded in para.7 of the award by the Labour Court where the sentence in its sense has been left incomplete by mistake. This Court has not had the benefit of reading Gurcharan Singh's testimony in full and, therefore, this Court has had to rely on the relevant part of the written statement to connect the missing part to draw the full meaning, as was pointed out by the learned counsel for PUNSUP.

4. The Labour Court has also returned a finding that retrenchment compensation in terms of section 25-F was not paid at the time of termination. No payment or short payment of retrenchment compensation at the given time means one and the same thing. In both the situations, the tests of legal and valid retrenchment under section 25-F of the Act are not satisfied. The question presently is whether the Labour Court award can be sustained in the eyes of law. It is not disputed before this Court that the workman had put in 240 days of service in the 12 calendar months preceding the date of termination. There was apparent partial non-compliance of section 25-F of the Act which has made the termination illegal as held by the Labour Court itself. While this Court is in the process of moulding relief which could be granted to the workman it was informed by both the learned counsel that in the year 2000 the workman was taken back in service after he had successfully invoked the protection of re-employment in section 25-H of the Act because in the interregnum other persons had been appointed by the management in his place as Chowkidar/s.

He continued to serve till he retired on July 31, 2010. However, his status remained as a daily wager throughout the period and many service benefits granted to other chowkidars who were either retained in service or were appointed after his forced exit were not made available to him because he was not declared a permanent employee.

5. In the renewed judicial thinking of the Supreme Court in the recent past, revitalizing the ruling in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 the view of the law on the subject has shifted to the original thinking with a slew of decisions in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192, **Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, 2010 (3) SLR 663, **Devinder Singh vs. Municipal Council, Sanaur**, (2011) 6 SCC 584 and **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324, **Tapash Kumar Paul vs. BSNL and another**, 2014 (3) SCT 106, **Jasmer Singh v. State of Haryana**, (2015) 4 SCC 458 and **Fisheries Department, State of Uttar Pradesh v. Charan Singh**. (2015) 8 SCC 150 shifting the axis to the preservation of the primordial right to life and right to livelihood as part of relief dispensation system in labour law.

6. On facts, the period of service rendered by the workman in the first leg of employment was one and a half year. He remained in wilderness for over a decade after he lost his job in November 1987. He prays that he may be given the notional benefits of continuity of service upon deemed reinstatement from 1987 extending to the year 2000 so that the period can

be clubbed notionally with the period of service spent on re-entry from the year 2000 to 2010. The Labour Court has granted wholly inadequate compensation in a sum of Rs.3560/- only representing eight months' pay to the workman which is not at all proper exercise of jurisdiction in moulding the relief. The Labour Court was not confronted with the situation prevailing on October 04, 1993 when the workman was reinstated to service by the management itself without any court intervention in the year 2000 by honouring the provisions of section 25-H of the Act remarkably during the pendency of this case and while it remained dormant.

7. In these special circumstances and by applying the principles in the aforesaid judgments of the Supreme Court, this Court is of the considered opinion that the award passed by the Presiding Officer, Labour Court, Bathinda dated October 04, 1993 deserves to be set aside as not sustainable in the eyes of law. The relief deserves to be moulded by awarding deemed reinstatement from the original termination/retrenchment prior to re-induction in service alongwith notional continuity of service from the date of termination till the date of re-employment as continuous for purposes of service benefits which may become available to the petitioner as a fallout of the modification of the impugned award by this order. It is ordered accordingly to serve the ends of justice. The original termination order is set aside as illegal for violation of the rights of the petitioner when the need and availability of work continued given the many godowns run by the PUNSUP coupled with the fact that the workplace godown was not shut down never to be opened again.

8. In view of the above discussion, the petition is, accordingly,

allowed without any order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

08.12.2015
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