

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 388 of 1996 (O&M)

Date of decision : 15.07.2015

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Dalbir Singh

.....Petitioner

vs.

Industrial Tribunal-cum-Labour Court,
through Presiding Officer, Faridabad and another

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Ms. Abha Rathore, Advocate
for the petitioner

None for the respondents

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

In this writ petition, the petitioner is aggrieved by a portion of the award passed by the Industrial Tribunal-cum-Labour Court-I, Faridabad, in Reference No. 344 of 1989, to the extent of denial of back wages.

Brief facts of the case are as follows.

The petitioner was appointed in the 2nd respondent organisation as a Driver on 22.10.1981. He was assigned the driver duty to unload certain material at Kodasalli Dam Project in Karnataka from Faridabad in the month of April, 1989. Similarly, one Sh. Mohinder Singh, Driver, was also assigned identical duty by a different vehicle. The petitioner was driving the vehicle No. HYW-864, which was checked by the RTO, Kohlapur, Maharashtra State on 15.4.1989 and the vehicle was detained for non-production of RR, CE and RC, Motor Vehicle was carrying excessive goods and chassis and engine number was not traceable etc., vide Annexure P-3. Consequently, the petitioner could not deliver the goods timely. Ultimately, with the help of the Manager of 2nd respondent Organisation goods were delivered. In this background the petitioner was charge sheeted that he failed to deliver the goods timely, whereas Sh. Mohinder Singh, the other driver, who was also assigned identical duty, was able to deliver the goods within the time limit stipulated, due to negligence of the petitioner, the vehicle was seized etc. On the said allegation, an enquiry was held and the petitioner's services were terminated on 24.5.1989.

The petitioner aggrieved by the order of termination, approached the competent authority. Government of Haryana, vide its endorsement No. OV/FD/4/49/3444 referred the dispute between the parties on 16.10.1989. The Industrial Tribunal-cum-Labour Court-I, Faridabad adjudicated the dispute. The Labour Court after perusal of the records and with reference to domestic enquiry, held that there is

no substance in the allegations. Accordingly, it was ordered that the enquiry conducted stands vitiated. However, back wages were denied on the sole fact that the truck driven by the petitioner remained standing at Karnataka State border for 1 ½ years and there is a loss caused to the company and the petitioner has not rendered any service to the company, it was held that he is not entitled for the back wages. Aggrieved by the denial of back wages, this writ petition has been filed.

The petitioner mainly contended that there is no negligence or any misconduct committed by him. In so far as the detention of vehicle by the RTO, Kohlapur, Maharashtra State is concerned was due to non-production of valid documents relating to the vehicle. Therefore, he cannot be blamed. As he was not at fault. It was further contended that the 2nd respondent-company should have kept the vehicle documents in accordance with the Motor Vehicle Act and Rules. Therefore, denial of back wages for no fault of the petitioner, is incorrect and award of the Labour Court in so far as denial of back wages is concerned, is highly arbitrary and liable to be set aside.

The respondents' counsel remained absent. The written statement filed by the 2nd respondent has been taken note of. The respondents, instead of filing writ petition against award of the Labour Court, have contended on merits of the case, in so far as termination is concerned and it was further contended that denial of back wages by the Labour Court is in order since the petitioner is at fault due to his negligence. The truck was seized and detained for a

period of 1 ½ years and he has not discharged the duties of the post.

I have perused the records of the petition. The factual aspects of the case reveal that the petitioner has not committed any misconduct. On the other hand due to negligence of the 2nd respondent in not keeping the vehicle documents like RR, CE and RC in order and due to which the vehicle which was driven by the petitioner was seized by the RTO, Kohlapur, Maharashtra State, whereby there was a delay in supplying the goods by road which was entrusted to the petitioner. Therefore, there is no lapse on the part of the petitioner. On the contrary there were lapses on the part of the 2nd respondent due to which the petitioner shall not be penalised by terminating his services. The Labour Court rightly held that enquiry was not conducted in accordance with the procedure known to the law and petitioner has not committed any misconduct, whereby the entire enquiry is vitiated. The question for consideration is whether the petitioner is entitled for back wages or not.

The learned counsel relied on the two decisions of the Hon'ble Supreme Court in the case of **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** (2014) 10 Supreme Court Cases 301, held as follows:

“32. Further, assuming for the sake of argument that the unauthorised absence of the appellant is a fact, the employer is empowered to grant of leave without wages or extraordinary leave. This aspect of the case has not been taken into consideration by the employer at the time

of passing the order of termination. Therefore, having regard to the period of unauthorised absence and facts and circumstances of the case, we deem it proper to treat the unauthorised absence period as leave without wages. In our view, the termination order is vitiated since it is disproportionate to the gravity of misconduct alleged against him. The employment of the appellant-workman with the respondent is the source of income for himself and his family members' livelihood, thereby their liberty and livelihood guaranteed under [Article 21](#) of the Constitution of India is denied as per the view of this Court in its Constitution Bench decision in *Olga Tellis v. Bombay Municipal Corpn.* wherein it was held as under:- (SCC p.572, para 32)

“**32**.....The sweep of the right to life conferred by [Article 21](#) is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a

person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.”

33. The appellant workman is a conductor in the respondent-statutory body which is an undertaking under the State Government of Haryana thus it is a potential employment. Therefore, his services could not have been dispensed with by passing an order of termination on the alleged ground of unauthorised absence without considering the leave at his credit and further examining whether he is entitled for either leave without wages or extraordinary leave. Therefore, the order of termination passed is against the fundamental rights guaranteed to the workman under Articles 14, 16, 19 and 21 of the Constitution of India and against the statutory rights conferred upon him under the Act as well as against the

law laid down by this Court in the cases referred to supra. This important aspect of the case has not been considered by the courts below. Therefore, the impugned award of the Labour Court and the judgment & order of the High Court are liable to be set aside.”

In yet another case viz **Sudarshan Rajpoot vs. Uttar Pradesh State Road Transport Corporation**, (2015) 2 Supreme Court Cases 317, held as follows:-

“**32.** Further, it is important for us to examine another aspect of the case on hand with respect to reinstatement, back-wages and the other consequential benefits to be awarded in favour of the appellant-workman. In the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, after referring to three Judge Bench Judgments with regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award back-wages if order of termination/dismissal is set aside, law has been laid down in this regard by this Court as under:-

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or

removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee,

who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

Therefore, keeping in mind the principles laid down by this Court in the above case, we are of the opinion that the appellant-workman should be paid full back-wages by the respondent-Corporation.”

The Labour Court while denying the back wages to the petitioner unnecessarily relied on the fact that truck which was detained by the RTO authorities and it was lying for 1-½ years, whereby loss was caused to the 2nd respondent and further it was held that petitioner has not rendered any service to the company and therefore, he is not entitled for back wages. The reasoning of the Labour Court in denying the back wages are highly arbitrary and contrary to the facts. The detention of vehicle by the RTO, Kohlapur, Maharashtra State, was in accordance with Motor Vehicle Act and Rules i.e. the vehicle was driven on the road without valid documents and engine and chassis number were not visible etc.

For not having valid vehicle documents, the petitioner shall not be held responsible. Moreover, the vehicle detained in the Maharashtra by the competent authority for 1 ½ years for which petitioner is not held responsible. If the 2nd respondent had valid documents relating to the seized truck, it could have been got

released at the earliest. Having regard to the facts and circumstances of the case, the petitioner is not responsible for the detention of seized vehicle for 1 ½ years. In view of the principle laid down by the Supreme Court read with facts of the case, denial of back wages by the Labour Court to the petitioner is to be interfered.

For the foregoing reasons, I grant the following reliefs to the workman by allowing this writ petition:-

- i) The award of the Labour Court to the extent of denial of back wages is set aside.
- ii) The 2nd respondent is directed to pay the back wages to the petitioner from the date of termination i.e. from 24.5.1989 till 9.5.1994, the date on which he has been reinstated.
- iii) The 2nd respondent shall pay full back wages to the petitioner within four months from the date of receipt of a copy of this order, alongwith interest @ 9% per annum.

July 15, 2015
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(P.B. Bajanthri)
Judge