

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

308

LPA No.142 of 2004

Date of Decision: January 22, 2015

Sham Sunder

...Appellant

Versus

The Presiding Officer, Labour Court, Union Territory, Chandigarh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. P.K. Gupta, Advocate
for the appellant.

Mr. Amar Vivek, Additional Advocate General, Haryana.

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (ORAL)

This is an appeal against the order and judgment of the learned Single Judge, dismissing the appellant's petition challenging the order of the Labour Court only to the extent that the Labour Court granted him only 50% back wages. The appellant contended that he ought to have been granted back wages for the entire period from the date of his dismissal to the date of his reinstatement. The appellant unfortunately died during the pendency of this appeal and his legal heirs have been brought on record.

2. The only reason that the petitioner has been denied full back wages is that he prosecuted litigation in the Civil Court, which had no jurisdiction.

3. The appellant was appointed in the year 1974. He was dismissed on ground of embezzlement. The petitioner challenged the same by filing a civil suit. In April, 1996, the learned Judge hearing the civil suit held that the Civil Court had jurisdiction to entertain the appellant's claim.

However, the respondents challenged the same by filing a revision application, which was allowed on 05.11.1979. In other words, it was held that the Civil Court had no jurisdiction in the matter. In the circumstances, in April, 1980, the petitioner sought for a reference under Section 10(1) of the Industrial Disputes Act. A reference was made in which the Labour Court by the impugned order and judgment granted the appellant reinstatement with 50% back wages. The appellant was denied 50% back wages only on the ground that he prosecuted a civil suit in a Court without jurisdiction.

4. In the facts and circumstances of this case, the appellant ought not to have been denied back wages. There is nothing to indicate that the appellant prosecuted the litigation *mala fide* knowing or even believing that the Civil Court had no jurisdiction. In fact, as we noted earlier the learned Judge trying the suit held that he had jurisdiction in the matter. The judgment was overruled in revision. It can hardly, therefore, be said that the petitioner's decision to prosecute the litigation in a Civil Court was absurd or unsustainable. On merits we must proceed on the basis that the order of dismissal was illegal and unjustified. The respondents have not challenged the decision of the Labour Court in that regard. The same has, therefore, attained finality. In **S.M. Sayid Vs. Baroda Municipal Corporation, AIR 1984 SC 1829**, the Supreme Court upheld the claim for full back wages. The case was similar to the one before us. The facts in the present case are stronger in support of the claim for full back wages.

5. In the circumstances, the appeal is allowed. The impugned order and judgment is set aside. The order impugned in the writ petition is set aside only to the extent that the appellant was denied 50% back wages.

In the result the appellant shall be entitled to full back wages. The same shall be paid by the respondents by 30th April, 2015, failing which the appellant shall be entitled to interest @ 9% per annum. There is no order as to costs. The legal heirs of the appellant shall be entitled to the benefit of this judgment and of the award of the Labour Court to the extent it has been sustained.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

January 22, 2015

Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE