IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15695 of 2009
Date of Decision: 25.08.2015

Satpal Singh

... Petitioner

Versus

Presiding Officer, Labour Court,
Patiala and others ... Respondents

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

Present: Mr. Shyam Kumar Sharma, Advocate,
for the petitioner.

Mr. Pavit Mattewal, Advocate,
for the respondent 2 and 3.

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

RAJIV NARAIN RAINA, J.

1. This is workman's writ petition under Articles 226 & 227 of the Constitution of India for setting aside the impugned award passed by the learned Labour Court, Patiala on May 12, 2009 disposing of IR No.473 of 2000. The relief of compensation in a sum of Rs.35,000/- only has been awarded to the workman in lieu of reinstatement and back wages. The dispute arises from termination effected on July 15, 1985 by respondent PSEB while the petitioner was working as a work-charged Beldar amongst a host of other Beldars etc. in the Anandpur Sahib Hydel Construction Division No.1, Nangal, Punjab run by PSEB. He was employed on January 01, 1977 and had worked continuously and uninterruptedly till the date of termination. Initially, he did not take recourse to the remedy available under

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

the Industrial Disputes, Act, 1947 ("the Act"). Instead, he filed a civil suit in the year 1987 in the court of the Civil Judge at Ropar which was dismissed on March 14, 1988 for want of notice served on the management under Section 80 CPC.

2. Thereafter, a fresh suit was brought after serving notice under Section 80 CPC. The suit was partly decreed on April 04, 1990 in favour of the petitioner. The civil court directed that retrenched employees be absorbed in some other ongoing project of PSEB against future vacancies. The State appealed and during its pendency, the court of first appeal issued directions to the respondent-Department to adjust the retrenched workman as per the decision of the Supreme Court rendered in **State of Haryana and others vs. Piara Singh and others**, (1992) 4 SCC 118 and the appeal finally came to be disposed of in the year 1993.

3. The petitioner was not granted any relief in execution proceeding initiated by him which was dismissed after protracted litigation on September 23, 1998. As the execution proceedings bore no fruit through the civil court process the petitioner turned around and raised an industrial dispute by serving a demand notice dated October 23, 1998 on the respondent-Management. Conciliation proceedings were initiated which failed to settle the dispute of termination and the Labour Commissioner, Punjab, Chandigarh exercising powers of the appropriate Government referred the dispute under Section 10 of the Act on October 24, 2000 to the notified labour court. This is how the reference came to be registered in the Labour Court, Patiala.

4. For the first time, the petitioner invoked his industrial rights

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

preserved by Sections 25F and 25G of the Act which he said were breached as neither notice, notice pay and retrenchment compensation was paid at the time of termination of service on July 15, 1985 and persons junior to him were retained. He further pleaded that after his retrenchment fresh recruitment was made to induct work-charged Beldars. He claimed that he was unemployed while he was litigating in the civil court and also thereafter and hence prayed for reinstatement with continuity of service and payment of full back pay.

5. The claim of the workman was contested by the respondents before the labour court. They filed written statement. It was pleaded in defence that the workman had served up to July 31, 1985 with intermittent breaks in service. The workman had not completed 240 days of service in any calendar year. It was pleaded that all terminal benefits were paid to the workman at the time of retrenchment and nothing more was to be done. The workmen were one amongst many workers who on completion of the Anandpur Sahib Hydel Project were retrenched as surplus after obtaining permission from the Government to close down the project. They argued that the claim was barred by time and the workman had filed a civil suit regarding similar matter and cause of action for which reasons the reference was not maintainable and was thus liable to the declined.

6. Parties led their evidence on as many as four issues framed by the Labour Court. These were: whether the reference was maintainable; whether it was bad for non-joinder/misjoinder of necessary parties; whether the termination was justified and in order and to what relief was the workman entitled to. Parties presented their evidence both oral and

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

documentary in support of their respective cases against each other.

7. The evidence on record bears that petitioner was one of 5500 workers retrenched on completion of the project. It came out in evidence that the entire record relating to his case was damaged/burnt during the aftermath of the Mandal Commission agitation that took place in July 1990 and an "FIR" to this effect was lodged in Police Station Ex.M-2 but the seniority list Ex.M-1 remained." We would find later that the incident was recorded only as an entry in the Daily Diary Report of the police station concerned.

8. Before the Labour Court, the workman urged the reference was maintainable since the civil court has no jurisdiction to decide a dispute based on industrial rights. Therefore, the judgment and decree of the civil court was a nullity and in support of this argument he relied on the ruling of this Court in **General Manager, Punjab Roadways, Amritsar and another vs. Dharam Singh ex-conductor**, 1996 (2) RSJ 815. It was an argument against oneself to cover the period of civil litigation. But it was legally permissible as an explanation for pursuing legal remedy in a wrong forum.

9. On the question of maintainability, the Labour Court applied the law laid down by the Supreme Court in **State of Haryana and others vs. Bikkar Singh**, 2006 (3) SCT 183 and **Rajasthan S.R.T.C. vs. Ugma Ram Chaudhary**, 2006 SCC (L&S) 58 wherein the Supreme Court held that when dispute involves recognition, observance and enforcement of any of the rights or obligations created under the ID Act, the remedy is only available under the special law and thus the decree passed by the civil court

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

in such matters would be rendered a nullity and unenforceable in law.

10. On facts the Labour Court held that the decrees dated April 04, 1990 and October 04, 1993 passed by the Sub Judge, Ropar and Additional District Judge, Ropar are a nullity. The Labour Court maintained it had jurisdiction to entertain and try the reference under Section 10 (1) (c) of the ID Act being an 'industrial dispute' arising in the setting of an 'industry' in the presence of an aggrieved 'workman' seeking justice. Joinder and mis-joinder of parties was not an issue pressed by the management at the time of hearing and will be deemed to be given up in further proceedings.

11. The third issue was regarding the validity of the retrenchment which was the moot issue open for trial. The Labour Court perused the copy of the service book of the workman exhibited on record from where it was evident that the workman had served the management for the period January 01, 1977 till July 15, 1985. On the question whether notice pay and retrenchment compensation was paid to the workman at the time of retrenchment in terms of Section 25F of the Act the court below answered that this fact was not proven at the inquiry as the management failed to produce any documentary evidence to substantiate the defence plea of PSEB having paid the terminal benefits and retrenchment compensation, by whatever name called, at the time of termination. Court reasoned that if the record was destroyed then DDR No.19 dated September 27, 1990 (EX.M-2) did not specifically mention that the original record relating to payment of retrenchment compensation was also destroyed, meaning thereby, the other record mentioned in the DDR may have been destroyed. Since payment of retrenchment compensation and notice pay was not proved to have been

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

paid at the time of retrenchment, the Labour Court concluded that the provisions of Section 25F of the Act were violated. This line of thinking appears to be correct and the inference drawn is a plausible one.

12. However, in the matter of grant of relief, the Labour Court applied the law laid down by the courts holding that violation of the provisions of Section 25F of the Act would not automatically lead to reinstatement. The court applied the law laid down by the Supreme Court in **Haryana State Electronics Development Corporation Ltd. vs. Mamni**, 2006 (2) LLJ 744 (SC) for reaching the conclusion.

13. Still further, the court held that since the respondent-Department is governed by its own set of service rules and regulations, the proper procedure was not followed while giving employment to the petitioner since "such type of adhoc/temporary appointments" are contrary to the scheme in the provisions of Articles 14 & 16 of the Constitution of India and are illegal and to this end the court also relied on the judgment of the Supreme Court in **Secretary, State of Karnataka vs. Umadevi,** (2006) 4 SCC 1. Lapse of 24 years after the order of termination was found to be sufficient time-lag to decline reinstatement and payment of back wages. To my mind the Labour Court was not correct in its thinking in holding that the workman occupied a "public post" on work-charged basis and, therefore, the employment was not in terms of the recruitment rules applicable to the post since no rule was shown as to recruitment of work charged Beldars. To repeat, the management did not cite any rule or regulation for the Labour Court to have reached this conclusion in absence of concrete evidence nor could it be said that the work of Beldar on work-charged basis is an

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

engagement on a "sanctified" public post the salary/wages for the post is apportioned by budget in the Assembly or in the sense that the employment is governed by rules, regulations and Article 311 of the Constitution. The conclusion is facile and based on presumptions and assumptions are mostly whimsical or unruly horses unless the rider is well grounded in the logic of the law and the presumptions and assumptions are drawn from verified facts proved on record. The reasoning of the labour court holding that the constitutional scheme has been violated in the appointment of the petitioner on standards indicated in *Umadevi* case is not proper deduction in labour law jurisprudence which is of a different ilk than service law as practised in courts. In any case Umadevi case stands explained in **Maharashtra State Road Transport Corporation Ltd. vs. Casteribe Rajya P. Karmchari Sanghatana,** (2009) 8 SCC 556 to which decision I will come a little later.

14. For these fallacious reasons, the principal relief was declined although a categorical finding was returned that the termination was illegal and brought about in violation of the conditions precedent in Section 25F of the ID Act. The pendency of 9 years of litigation before the Labour Court was itself viewed as a negating factor to decline reinstatement and back wages and in the discretionary view of the Labour Court it thought that justice would be best subserved if compensation of Rs.35,000/- was awarded in lieu of reinstatement and back wages, the figure representing reasonable compensation to sever the relationship of employment.

15. Even if this was a case of compensation to be granted by way of relief even then the amount of Rs.35,000/- to my mind is wholly inadequate and far too meagre and which has aptly been criticized by the

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

learned counsel for the workman as out of sync with the changing times undergoing a metamorphosis in the process of shaping and re-shaping the law. Modern precedents indicate otherwise. The cost of living index continues to rise and to this extent, I agree that if this were a case of compensation then Rs.35,000/- is unreasonable and wholly inadequate compensation and the award is not sustainable on quantum of severance damages especially in the line of judgments of the Supreme Court in cases where reinstatement was not found to be just to the cause. Precedents on quantification are many, based on myriad factors such as length of service, nature of the job, status of employer, availability of work and nature of the injury etc. and need not be spelled out in detail but a few instances would do when multiplying length of service from brief to long tenure, such as in **BSNLv. Man Singh**, (2012) 1 SCC 558; **BSNL v. Bhuremal**, (2014) 7 SCC 177, Asst. Engineer, Rajasthan Development Corporation & Anr v. Gitam Singh, (2013) 5 SCC 136, the recent Division Bench of this Court in **Municipal Council, Dina Nagar v. POLC, Gurdaspur**, 2015 (1) RSJ 765 which would take compensation packages to much higher levels than a measly Rs. 35, 000 granted in this case.

16. However, the petitioner has not restricted his claim to enhancement of compensation but pleads for reinstatement to service to the original position in view of the recent trends in the law on the subject delivered by the Supreme Court in a series of judgments charting a different course in reaffirming past law in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192, **Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**,

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

2010 (3) SLR 663, **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; **Tapash Kumar Paul vs. BSNL & Ors.**, 2014 (3) SCT 106 (SC); **Jasmer Singh v. State of Haryana,** (2015) 4 SCC 458 asserting that he has indeed a case for reinstatement and payment of full back wages. These authorities indicate the legal position obtaining from violation of Section 25F of the Act and the clock has been timed to return to the view expressed by the Supreme Court in a Coram of 3 Hon'ble Judges in the locus classicus; **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80; **Surendra Kumar Verma v. CGIT**, (1980) 4 SCC 443 and **PGI of Medical Research vs. Raj Kumar**, (2001) 2 SCC 54 [reiterating ratio in *Hindustan Tin Works*] cases. However, these cases also cannot be said to lay down a law in absolute terms that right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law. In the second case the Supreme Court held:

> *"Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the*

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

> *relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."*

17. In *Surendra Kumar Verma* case (supra) R.S.Pathak,J. [later Pathak, CJI] wrote a short separate note to the main judgment authored by O. Chinnappa Reddy, J. observing:

> *"Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief."*

18. To return to *Casteribe* (supra). The service law principles in *Umadevi's* case (supra) have been reconciled by the Supreme Court in relation to the objects, reasons and the underlying socially beneficial principles in labour laws preserved in the provisions of the Industrial Disputes Act, 1947 by the Supreme Court while dealing with the issue of the power of the labour court in relation to settlement of disputes to bring about peace and harmony in the background of the provisions of the Maharasthra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 in *Casteribe* case (supra) wherein the following observations are recorded:-

> *"Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of*

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

> *the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established."*

19. The judgment in *Casteribe* case was pronounced on August 28, 2009 and the view was not available when the award in the present case was passed on May 12, 2009, which decision has made all the difference in explaining the subtle nuances between service law and labour law principles and, therefore, a blind reliance placed by the Labour Court, Patiala on *Umadevi's* case is not sustainable any longer for this Court to throw out the claim for reinstatement offhand from the window without examining the distinct possibility, plausibility and fairness in awarding the principal relief sought of reinstatement.

20. The legal principles guarding against automatic reinstatement or full back wages are really one about the way discretion may be exercised by the Labour Court judiciously gathered from the proven facts on record on a case to case basis helping it to select the most appropriate and legally grantable relief which dispensation would depend on many imponderable factors which cannot be put in a strait-jacket formula or expressed as in a Euclid's theorem. Neither is it safe to take away the judicial function of the court and confine it to a uniform standard and reduce it to a mechanical application. If reinstatement is not to be granted automatically it means only this; that when the principle of automatic reinstatement comes into play at the stage of assessing relief to be granted or denied, the Labour Court would

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

be expected to prepare itself to act with care and caution in achieving Aristotle's golden mean and exercise its discretion judicially and judiciously on a cumulative and proper understanding of the totality of facts and circumstances viewed aerially standing above the facts and the case in hand without being dogmatic and cussed about it, since dogma is the bane of judicial thinking. Judgments are not dogmas. Every judgment or precedent is to be read in past research and more the judgments the more difficult is the job because no one knows it all. Without being seen as making a sweeping statement, the Court must have freedom in the joints to act within the law with a spirit of pragmatism and prudence as their charter in understanding the workings of labour laws. However, the principle "no automatic reinstatement" is not to be used like a machine gun or as an ouster clause in all cases where Section 25F has been breached then reinstatement must be denied automatically without saying anything more and the case wrapped up for the alternative relief of compensation or none whatsoever. Obsession with precedents stunts the growth of law to be administered in the times we live. The High Courts while judicially reviewing awards of Labour Courts are to anchor their judgments in labour laws on the sound and broad principles laid down in paragraph 17 in *Harjinder Singh's* case (supra) where the following background principles have been laid down:-

> *"17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the*

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

> *provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" - State of Mysore v. Workers of Gold Mines AIR 1958 SC 923."*

21. Still further, in para.23 in *Harjinder Singh's* case the Supreme Court has explained the "visible shift" in the courts approach in dealing with cases involving the interpretation of social welfare legislation. The Supreme Court summed up the position in para.23 of the report with some anxiety, observing as follows:-

> *23. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the*

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."

22. In a separate but concurring judgment by Asok Kumar Ganguly, J. in *Harjinder Singh* case supra His Lordship re-affirmed the legal position in the following words:-

"11. That being the legal position, under Article 38 of the Constitution, a duty is cast on the State, which includes the judiciary, to secure a social order for the promotion of the welfare of the people Article 38(1) runs as follows:

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

This is echoing the preambular promise;

12. Therefore, it is clearly the duty of the judiciary to promote a social order in which justice, economic and political informs all the institution of the national life. This was also made clear in Kesavananda Bharati (supra) by Justice Mathew at para 1728, p. 1952 and His Lordship held that the Directive Principles nevertheless are:

"...fundamental in the governance of the country and all the organs of the State, including the judiciary are

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

bound to enforce those directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience."

13. In view of such clear enunciation of the legal principles, I am in clear agreement with Brother J. Singhvi that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker sections of the society in view of the clear constitutional mandate discussed above.

14. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our Constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity.

15. Commenting on the importance of Article 38 in the Constitutional scheme, this court in Sri Srinivasa Theatre and Others vs. Government of Tamil Nadu and others [(1992) 2 SCC 643], held that equality before law is a dynamic concept having many facets. One facet- the most commonly acknowledged- is that there shall be not be any privileged person or class and that none shall be above the law. This Court held that Art 38 contemplates an equal society [Para 10, pg. 651].

16. In Indra Sawhney and Others vs. Union of India and Others [1992 Supp. (3) SCC 217], the Constitution Bench of the Supreme Court held that: "The content of the expression "equality before law" is illustrated not only by Articles 15 to 18 but also by the several articles in Part IV, in particular, Articles 38, 39, 39-A, 41 and 46."

[at Paras 643, pg. 633]

17. Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social context in which they work. That is why it was said in Authorised Officer, Thanjavur and another vs. S. Naganatha Ayyar and others -

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

> *[(1979) 3 SCC 466], while interpreting the land reforms Act, that beneficial construction has to be given to welfare legislation. Justice Krishna Iyer, speaking for the Court, made it very clear that even though the judges are "constitutional invigilators and statutory interpreters" they should "also be responsive to part IV of the Constitution being "one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order". The Learned Judge made it very clear that when the Judges "decode social legislation, they must be animated by a goal oriented approach" and the Learned Judge opined, and if I may say so, unerringly, that in this country "the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme." [Para 1, p. 468]*
>
> *18. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother Justice Singhvi about a disturbing contrary trend which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalisation of economy."*

23. There is yet another issue which needs attention while dealing with the question of relief in a given case. This is with reference to the civil suit filed by the petitioner. In cases of dismissal following inquiry civil suits are maintainable by "workmen" serving in an "industry" both by definition under the ID Act in Section 2(s) and 2(j) respectively. In such cases, where the adverse action is found to be in violation of the constitutional provisions or mandatory requirements of statutory rules, the civil court would have jurisdiction to direct reinstatement with full back wages, cf. **Rajasthan S.R.T.C. and others vs. Mohar Singh,** (2008) 5 SCC 542. However, in cases of retrenchment or termination simpliciter etc. which are not as a result of misconduct or a departmental inquiry where Section 2A and Section 10 (1) (c) of the Act have come into play the workman can fault

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

employer's action in making illegal termination/dismissal by invoking industrial law principles in Sections 25F, 25G & 25H etc. and those in Schedule V of the Act when the termination is brought about as a result of unfair labour practice or victimization. It is well embedded in the law that industrial principles in Section 25F etc. are not available to the civil court which adjudicates disputes on standing orders, common or civil law principles. The complexion of the labour court is different in nature and character. It is not a court to start with but has only the trapping of a court, cf., 9 Judge Bench of the Supreme Court in **Bharat Bank Ltd, Delhi v. The Employees of Bharat Bank,** AIR 1950 SC 118: 1950 SCR 459. It follows such procedure as it thinks fit as are reposed in the principles of natural justice and what is codified in the ID Act and the rules framed thereunder. It can replace contracts of service and delete or insert covenants as no other court can. It is an administrator of social justice and that is how the framers conceived its structure and conferred power on it of an exceptional kind to maintain industrial peace and harmony to help build the commonwealth of the new nation. Emasculation of the labour laws since the 1960s and 1970s is what the refrain is in the judgments of Supreme Court noticed in para. 16 above in a visible re-shift in the trend in coming to grips with relief.

24. Mr. Pavit Mattewal appearing for respondents 2 & 3 submits that full back wages and reinstatement need not be granted automatically in every case and the present one is a fit case where delay should work against the petitioner to prevent reinstatement with full back wages. He quotes the following passage in **Rajasthan Lalit Kala Academy vs. Radhey Shyam**, (2008) 13 SCC 248, para.17 where it is observed by the Supreme Court:-

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

> *"17. Once the termination of service of an employee is held to be illegal, the relief of reinstatement is ordinarily available to the employee. But the relief of reinstatement with full back-wages need not be granted automatically in every case where the Labour Court/Industrial Tribunal records the finding that the termination of services of a workman was in violation of the provisions of the Act. For this purpose, several factors, like the manner and method of selection; nature of appointment-ad hoc, daily-wage, temporary or permanent etc., period for which the workman had worked and the delay in raising industrial dispute, are required to be taken into consideration."*

25. Mr. Mattewal is not incorrect in his submission that various factors would have to be taken into consideration before placing the finger on the appropriate relief which can be granted in a case of admitted violation of Section 25F of the Act but at the same time in the judgment itself the normal rule has been laid down that illegal termination of service would ordinarily make relief of reinstatement available to the employee. This takes us back to principle which roots back to the ratio in *Hindustan Tin Works Pvt. Ltd.* case (supra) as invigorated by *Harjinder Singh* case and the cases that have followed founded on the letter of the law as enunciated in the law laid down by the Supreme Court in the 60s and 70s.

26. Be that as it may, the selection of factors in matters of relief would ultimately depend on the wisdom and experience of labour courts and tribunals and how they would fashion justice and exercise their discretion judiciously on known principles of labour law, of which delay being one such debilitating factor as dealt with in another judgment that Mr. Mattewal cites in **U.P. State Road Transport Corporation vs. Ram Singh**, 2008 (17) SCC 627 where the Supreme Court noticed its earlier dicta and ruled

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

that Labour Court should not entertain an industrial dispute if there is an enormous delay in raising it, but delay by itself cannot be sufficient reason to reject an industrial dispute. Nevertheless, the delay cannot be unreasonable.

27. In the present case, the distance between the termination and the impugned award may appear to look enormous but the inequities of delay do not arise in this case since after termination on July 15, 1985 the petitioner wasted little time to approach the civil court based on legal advice then tendered which he followed resolutely as the permissible legal remedy. He pursued the civil court remedy up to September 23, 1998 in the bona fide belief instilled in him by his lawyer that he was pursuing the right path but the chase for relief has turned out to be a mirage. When relief became illusory but yet the chase was bona fide then the petitioner would have a right under Section 14 of the Limitation Act, 1963 to claim exemption of the period spent in litigation before the civil court from the industrial adjudicator or at least its underlying principles but it would be wrong to non-suit the petitioner on delay as there are no limitation prescribed in Section 10 of the ID Act since disputes can be raised and referred by the appropriate government “at any time”. In any case partial relief was obtained from the civil court which was frustrated in execution proceedings. At the end of the day, the workman was left with nothing in his hand and therefore turned around on saner advice to invoke for the first time the principles of industrial law to challenge the order of termination on grounds available in the Act which he was eminently entitled to invoke, the delay notwithstanding. That is why the appropriate Government had made the

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

reference to the Labour Court for adjudication on merits and the PSEB did not challenge the reference order in separate proceedings in the High Court as not maintainable and continued to contest the case on merits. The contest had resulted in denial of reinstatement by award of a meagre sum of Rs.35,000/- as compensation instead. The Labour Court has held that the decrees dated April 04, 1990 and October 04, 1993 were a nullity and the State has not assailed that finding before this Court in a separate writ petition.

28. A reading of the discussion in the award does not throw much light on the factual backdrop of the case or the reasons which have weighed in denying reinstatement except noticeably the blind application of the principles of law laid down in *Mamni* and *Uma Devi* cases (supra) which are labour and service law cases and the ruling in **Jaipur Development Authority vs. Ram Sahai and another**, (2006) 11 SCC 684. The other reason to deny relief by the labour court in its award attributes itself to long pendency of 9 years of litigation in the labour court which was not a proper exercise of jurisdiction as no fault could be found in the petitioner in litigating before the Labour Court taking 9 years to resolve the reference all the time only seeking justice for himself. There is ample authority in precedents which need not be cited that have ruled out such consideration is irrelevant. The petitioner cannot be punished for the delay unless he caused it. Such a finding in not there in the award. This process of reasoning is not good and in held bad and not tenable.

29. There is yet another reason why the impugned award is not legally sustainable is that some other workmen employed in the Anandpur

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

Sahib Hydel Construction Project as Beldar at about the same time as the petitioner and placed in similar circumstances litigated before the labour courts and have been awarded reinstatement and continuity of service but without back wages in Reference No.357 of 1996, *Som Nath vs. The Secretary, Punjab State Electricity Board, Patiala and others* (P-4) and in Reference No.359 of 1996, *Ram Ji Devi vs. The Secretary, Punjab State Electricity Board, Patiala and others* (P-5) decided by the Presiding Officer, Labour Court, Patiala on November 26, 1999 granting the same relief as was granted to Som Nath and, therefore, both the cases cannot be distinguished only because the petitioner pursued remedy before the civil court in the first instance. All three workers deserve parity of treatment to prevent unfair discrimination and not be seen as a violation of Article 14 of the Constitution of India. There is yet a third instance under the same employer where relief was granted in Reference No.120 of 2008 to a work-charged T-Mate whose services were illegally terminated by the competent authority on July 15, 1985 and he too secured Reference No.120 of 2008 in case titled *Ajaib Singh vs. Punjab State Electricity Board, Patiala and another* and succeeded by the award dated November 25, 2011 awarding reinstatement with continuity of service to him but without back wages. There is nothing on record of this file to suggest that those awards are not final between the parties. There is also nothing on record to suggest that the petitioner was gainfully employed in the capacity he was removed from and his livelihood deprived. If he has earned something somewhere as he must have it would be treated as a solatium to keep his body and soul together. In any case it was for the respondent to show that departure should be made

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

from the ordinary rule. The workman had pleaded so which shifts the burden on the respondent PSEB.

30. In the above overview of facts and circumstances and visit to the past precedents noticed above and those noticed by the Labour Court, Patiala itself in the impugned award this Court finds sufficient reasons to entitle the petitioner to the relief of reinstatement and continuity of service but without back wages in order to accord similar treatment with other award holders in PSEB once working in the same project now in some other in order to remove any glimpses of unfair discrimination. Relief based on unfair discrimination in a case of regularization of services became the bedrock of the tide-turning judgment of the Supreme Court in **Hari Nandan Prasad and another v. Employer I/R to Management of FCI and another**; 2014 (2) SCT 234 (SC) applying principles of non-discrimination. See also the decision of the single bench of this Court rendered in **Khajjan Singh v. State of Haryana & Others**, 2015 (1) SCT 604: 2015 (2) RSJ 135 based on the precedential relationship between *Umadevi* and *Casteribe* cases as between service law and labour law principles. I would draw only a parallel argument of preventing discrimination from *Hari Nandan Prasad* case (supra), though dealing with regularization, by way of an analogy wherein the Supreme Court held in para. 34 as follows:-

> *"34...However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the*

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

> *Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."*

31. Mr. Mattewal on the aspect of relief is quite correct in contending that State should not be made to bear the financial load of 13 years delay in raising the claim under the Act but at the same time the delay cannot be held to be unreasonable as suggested by him in view of *Ram Singh* (supra) since an available remedy was opted to be pursued in the civil court where 13 years were misspent, but I agree with him that this is not a fit case for awarding full back wages from the date of termination which in any case cannot be granted automatically in a case where the tribunal records a finding that the termination was in violation of the provisions of Section 25F of the Act. The respondent Board cannot be blamed for that loss of time and to be made to pay for it.

32. In granting relief of reinstatement I would make reference to a few single bench decisions I have rendered in cases **Maya Devi v. Presiding Officer, Industrial Tribunal-cum Labour Court, Rohtak and Ors**., 2012 (3) SCT 399; **Chinti Devi v. Presiding Officer, Industrial Tribunal-cum Labour Court, Rohtak and Ors**., 2013 SCT 597, **The President, Maha Sabha Gurukul Vidyapeeth v. The Presiding Officer**, 2013 (2) PLR 239 and **Chairman, Mewat Development Agency, Nuh v. Ravinder Balwan & Anr.**, 2012 (2) RSJ 428 etc.

33. In the light of the awards made in other similar cases which are plainly of help to the petitioner and for the foregoing reasons recorded above and the applicable case law on the subject as discussed above, this petition is partially allowed. The impugned award of the Labour Court is set

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

aside. The petitioner is held entitled to reinstatement with notional continuity of service but without back wages prior to demand notice which admittedly was served by the petitioner-workman on respondent PSEB on October 23, 1998. The period spent in litigating before the civil court is declared *dies non*.

34. Further, in the considered view of this Court, back wages in this case from the date of demand notice i.e. October 23, 1998 till the date of the award will remain restricted to one third of the total arrears calculated on the basis of full wages last drawn [without gradual rise over the period of time in the special facts of the case] to serve the ends of justice with a view to hold in a balance, as equitably as possible, the monetary interests of both the sides, since all said and done, the finding of the Labour Court is categorical inasmuch as the act of termination was illegal and therefore cannot be legally sustained. But denying back wages altogether is not found to be just and fair in the case in hand and this Court is a court of record and is not bound by dispensations in other awards as the ultimate decision stands independently on its own facts and what is drawn is broad in nature that similar employees returned to PSEB fold with awards of labour courts and the petitioner was deprived and had to face the agony of litigation. However, the misadventure in the civil court and time wasted there is best moulded thus by excluding the period from 1985 to 1998 altogether for purposes of monetary dues. The labour court rightly held the termination illegal by returning a positive finding but the legal effect of the finding on issue of relief was not properly appreciated and adjudged by the court *a quo* which was swept off by *Umadevi* and *Mamni* cases without applying its

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

mind to the facts of the case and recording reasons of departure from the ordinary rule. There is thus a fundamental flaw in the award which necessitates interference by writ of certiorari. The back wages be accordingly computed and paid to the workman respondent within 3 months when the order is available in certified copy.

(RAJIV NARAIN RAINA)
JUDGE

25.08.2015
manju

MANJU
2015.10.07 12:48
I attest to the accuracy and
authenticity of this document
High Court Chandigarh