

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.13359 of 2011

Ramesh Kumar

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

2. CWP No.12290 of 2012

Jaswinder Singh

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

3. CWP No.12291 of 2012

Rajinder Singh

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

4. CWP No.12292 of 2012

Gurdev Singh

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

5. CWP No.12293 of 2012

Baljinder Singh

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-2-

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

6. CWP No.12295 of 2012

Jagbir Singh

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

7. CWP No.23132 of 2012

Om Parkash

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

8. CWP No.23175 of 2012

Satish Kumar

... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

9. CWP No.23199 of 2012

Onkar

... Petitioner

Versus

The Presiding Officer Labour Court,

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-3-

Ambala and another	... Respondents
10.	CWP No.23207 of 2012
Som Nath	... Petitioner
Versus	
The Presiding Officer Labour Court, Ambala and another	... Respondents
11.	CWP No.3079 of 2013
Bhiwani Singh	... Petitioner
Versus	
The Presiding Officer Labour Court, Ambala and another	... Respondents
12.	CWP No.23070 of 2012
Prem Chand	... Petitioner
Versus	
The Presiding Officer Labour Court, Ambala and another	... Respondents
13.	CWP No.23071 of 2012
Baljit Singh	... Petitioner
Versus	
The Presiding Officer Labour Court, Ambala and another	... Respondents
14.	CWP No.23072 of 2012
Mam Chand	... Petitioner

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-4-

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

15. CWP No.23076 of 2012

Pirithi Chand ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

16. CWP No.23080 of 2012

Dev Raj ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

17. CWP No.23081 of 2012

Sukhdev Singh ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

18. CWP No.23109 of 2012

Baljit Singh ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

19. CWP No.12299 of 2012

Ram Niwas ... Petitioner

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-5-

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

20. CWP No.23061 of 2012

Sudesh Kumar ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

21. CWP No.23067 of 2012

Jai Bhagwan ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

22. CWP No.23063 of 2012

Radhey Shyam ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

23. CWP No.23068 of 2012

Sudesh Kumar ... Petitioner

Versus

The Presiding Officer Labour Court,
Ambala and another ... Respondents

24. CWP No.23069 of 2012

Parmod ... Petitioner

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-6-

Versus

The Presiding Officer Labour Court,
Ambala and another

... Respondents

Date of Decision: 28.10.2015

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

Present: Mr. Jasmeet Singh Bedi, Advocate,
for the petitioner.

Mr. Sudarshan Goel, Advocate,
with Ms. Rupinder Kaur, 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.

1. This order will dispose of a bunch of 24 writ petitions cited above as common questions of law and fact are involved therein arising out of awards passed by the Presiding Officer, Labour Court, Ambala dismissing the references. The facts are taken from CWP No.13359 of 2011 titled *Ramesh Kumar vs. The Presiding Officer Labour Court, Ambala and another* for the sake of convenience and for brevity.

2. The petitioners have sought reinstatement with continuity of service and full back wages by calling upon the respondents to honour a settlement dated December 03, 1999 (P-1) arrived at between the workers and their Union and the management of M/s Naraingarh Sugar Mills Ltd., District Kurukshetra, Haryana. Clause ii, iii and v of the settlement have a direct bearing on the case and read as under:-

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-7-

“ii. As soon as the session on 1999-2000 would begin, the Management would take on duty all the workmen who were working in the previous session. The workers who raised slogans against the management during the strike and who abused the management, would beg pardon in writing from the management and then they would be taken on duty. Similarly the workers against whom FIR has been lodged, they would not be taken on duty for now and they would be allowed to join duties as per the atmosphere.

iii. Those workers who have worked during the previous season year 1998-1999 would be allowed to join duties as per their respective categories of work.

iv. Xxxxx xxxx xxxx xxxx xxxx

v. A committee of four persons would be constituted in which two persons would be from management and two from workers. This committee would prepare the seniority list of the workers working in the concern as per record which will be acceptable to both the parties.

In the end, all the workers have assured that they would give the full production, maintaining the discipline and the management would not resort to any sort of biased attitude towards any worker due to the said strike.”

3. **The case of the petitioner-Ramesh Kumar**

The case of the petitioner-Ramesh Kumar is like this: He was appointed as a permanent seasonal fireman in the respondent-Mills on December 02, 1996. The workers in the Mill felt that they were an exploited lot. They raised various demands on the management to improve their conditions of service. They raised industrial disputes with the management and served a charter of demands on it for favourable consideration. But no positive steps were taken by the management to ameliorate their working

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-8-

conditions and the right to return to work in the new crushing season without being dropped out of employment replaced by fresh hands. The workers resorted to direct action and sat on a peaceful *dharna* in front of the factory gate of the Mill starting November 18, 1999. This was followed by a call for a hunger strike and they sat in protest which led the respondent-Management to close the factory gate keeping the workers out which included the petitioner-Ramesh Kumar. The local administration intervened to negotiate a settlement between the disputing parties to restore peace and harmony in the Mill assisted by the Conciliation Officer of the Labour Department. An agreement was drawn out and entered into on December 03, 1999 between the workers Union and the respondent-Management. This settlement was forged during conciliation proceedings. The agreement was within the folds of Section 12 (3) of the Industrial Disputes Act, 1947 (for brevity “the Act”) and was thus statutory in character and binding upon the management. The management agreed to the position that those workers who had served in the previous sugarcane season would be taken back in service category-wise from the start of the next season for the crop year 1999-2000. However, the settlement was breached even before the proposed implementation meeting was scheduled to be held on December 20, 1999. The local management took an aggravated posture to get Section 144 Cr.P.C. clamped in the vicinity of the factory area and as a result all the workers including the petitioner expressed an intention to join their respective workplaces on the assurance of implementation of the settlement. The

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-9-

management was belligerent and took a tough stand. The workers were arrested under Section 107/51 Cr.P.C. and other sections of the IPC and a case was registered against them. The workers were admitted to bail by the local Court on March 31, 2000. They made a complaint to the Labour Commissioner, Haryana regarding non-implementation of the agreement/settlement but no steps were taken to redress their grievances which already stood settled. The workers on legal advice filed CWP No.7492 of 2000 before this Court praying for directions to the Mills and the State of Haryana to implement the settlement dated December 30, 1999. The petition was dismissed by the Division Bench of this Court on April 05, 2001 with the liberty to the petitioner/s to avail remedy under the Act, if so advised. The Court observed that an alternative remedy was available to the workmen and the writ petition involved disputed questions of fact which could only be resolved by means of adjudication before the labour court. The operative part of the order is reproduced:-

“The question whether the said workmen did not join after the settlement in the year 1999 or when not allowed to join is again disputed question of fact to be decided. This also cannot be decided in this writ petition. The proper remedy, therefore, would be only under the Industrial Disputes Act and not by filing this writ petition.”

4. The workers-Union raised the industrial dispute by serving a general demand notice dated June 05, 2001 for implementation of the settlement dated December 03, 1999. The Haryana Government rejected the demand notice by order dated February 20, 2002 on the ground that the

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-10-

workmen had remedy to approach prescribed authority designated under the provisions of the Act which contained the machinery for implementation by resort to Section 33-C (1) of the Act. The workers challenged the order by way of filing CWP No.11957 of 2002 which was dismissed on January 29, 2004 with liberty to the workmen to proceed under sections 29 -T and 25-U of the Act for prosecution for non-implementation of the agreement/settlement. These are the circumstances under which the workmen approached the Labour Commissioner through representation dated February 19, 2004 for enforcement of the settlement dated December 03, 1999. The appropriate Government advised the workers to file their individual demand notices under Section 2-A of the Act against their termination when not permitted to return to work and instead of allowing them to join duty the management had caused their arrest. This is how the demand notice dated September 15, 2004 was filed in volatile circumstances and a surcharged atmosphere. The individual disputes were referred by the appropriate Government to the Labour Court, Ambala under Section 2-A read with Section 10 (1) (c) of the Act vide Ref. No.15 of 2006 and the accompanying references in the connected cases.

5. The Labour Court, Ambala by its award dated February 13, 2007 has rejected the reference and the claim has been dismissed with special costs of Rs.3000/-.

6. Aggrieved by the award dated February 13, 2007 the workers approached this Court *inter alia* through CWP No.605 of 2008. The writ

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-11-

was allowed by the Division Bench by detailed order dated May 01, 2008. The Division Bench found a very gross distortion of the cross-examination of the workman appearing as WW-1 at the hands of the Labour Court, Ambala where the court *a quo* twisted the evidence from “yeh galat hai was recorded as yeh theek hai” which changed the meaning altogether. This Court examined the case threadbare and while quashing the award and remanding the case for fresh decision rather expressed displeasure of the award of the labour court. The operative part of the order is significant and deserves to be noticed, read and considered in the context of the fresh award passed which is subject matter of this second round of litigation fought in the court below. It is, therefore, reproduced in relevant extract:-

“Mr. Pritam Saini, Advocate, appearing for the petitioner-workman has stated that the learned Labour Court had misread the evidence and the findings arrived by the learned Labour Court are perverse. During the course of arguments, he placed certified copy of the cross-examination of the petitioner who was examined as WW-1, to state that intentionally the learned Labour Court has wrongly reproduced lines of cross-examination in para 16. The learned Labour Court has reproduced as under:-

“Yeh theek hai ki Bhupinder and Kuldeep ne bataur sharmik pratinidhi 3.12.99 ke samjhote ke mutabik gathit kameti mein bhag liya tha. Mujhe ye bhi pata hai ki Kameti ki meeting 4.12.99, 5.12.99 & 6.12.99 ko hui. Main kameti ke pass na gaya tha aur na hee maine kameti ko apna case likh kar diya tha.”

Whereas in the certified copy, it reads as under:-

“Yeh galat hai ki Bhupinder & Kuldeep ne bataur

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-12-

sharmik pratinidhi 3.12.99 ke samjhote ke mutabik gathit kameti mein bhag liya tha. Mujhe yeh na pata hai ki Kameti ki meeing 4/12, 5/12 & 6/12/99 ko hui. Mujhe jankari na hai meeting ke baad 40 aadmiyon ki list laga di ho. Main kabhi kameti ke pass na gaya tha aur na hee maine kameti ko apna case likh kar diya tha.”

We have heard learned counsel for the parties. We have also perused the reply filed by the respondent-Management. We have also read the statement of WW-2 Didar Singh who was posted as Security Supervisor with the respondent-Management.

We are of the firm view that the findings of the learned Labour Court cannot be sustained. It has gone in one way to dislodge the claim of the workman and has not appreciated the entire gamut. The learned Labour Court lost sight of the fact that the workmen through their Union have been agitating in the various forums which were available to them under the Law. They had filed the first writ petition in this Court (Annexure P-3) on 21.05.2000 when their efforts to bind the Management to honour the settlement (Annexure P-2) dated 03.12.1999 failed. The writ petition was filed after five months when the settlement dated 03.12.1999 was not honoured. Filing of the writ petitions suggest that the workers' Union had adopted the legal course at the earliest available opportunity. Writ petition was dismissed on April 05, 2001. They were relegated to raise their dispute under the Industrial Disputes Act. Immediately after obtaining the certified copy, they had served demand notice (Annexure P-5). The same remained pending with the Government and was rejected on 20.04.2002. Immediately thereafter, writ petition (Annexure P-7) was preferred. In the writ petition, counsel for the Management stated that the Management will not raise the plea of limitation, if such an application

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-13-

is filed within one month from the date when the writ petition was dismissed as withdrawn i.e. on 29.01.2004. Within one month, workers Union had given the representation. Show cause notice issued to the respondent-Management and thereafter, the reference was made in pursuance of which impugned award (Annexure P-15) was passed. We fail to understand as to how the learned Labour Court came to the conclusion that the workmen deliberately, intentionally and willfully had not reported for duty. Such a finding cannot be sustained. The very fact that the workmen were agitating, filed writ petition and representation, served demand notice, on declining of the reference, another writ petition was instituted. Thus, in the most peaceful manner, approaching the available authorities, acting in accordance with law, conduct of workmen is sufficient to infer that the workmen were running from pillar to post to agitate their grievance that the Management is avoiding the implementation of the settlement dated 03.12.1999. The learned Labour Court has not taken the larger perspective. Therefore, award (Annexure P-15) is liable to be quashed as the same is against the law and facts of the case. However, since the learned Labour Court has not taken into account the whole scenario, filing of various writ petitions and orders passed therein while arriving at the conclusion, we are of the view that both the workmen and the Management are entitled to project their view and can be afforded an opportunity to produce entire evidence, i.e. filing of the writ petitions and orders passed therein so that the learned Labour Court is able to adjudicate in just and proper manner. For doing so, we quash award (Annexure P-15) and remit the matter back to the learned Labour Court to decide afresh. In the present case litigation is pending since year, 1999. We direct the learned Labour Court to decide the matter within six months from the receipt of certified copy.”

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-14-

7. The remand proceedings have again resulted in dismissal of the reference. The workmen have got no relief whatsoever in the impugned award dated November 30, 2009 passed by the learned Presiding Officer, Labour Court, Ambala.

8. Heard Mr. J.S. Bedi, learned counsel appearing for the petitioner and Mr. Sudarshan Goel, learned counsel appearing with Ms. Rupinder Kaur, Advocate for the management respondent No.2 .

9. There is no trace of doubt as to the existence of the settlement dated December 03, 1999 entered between M/s Naraingarh Sugar Mills Ltd., Naraingarh and Naraingarh Sugar Mills Workers Union represented by Sh. Hem Raj, General Manager of the Mills and seven workmen including the General Secretary, Ajay Sharma and Vice President Kuldeep Singh etc on behalf of the workers. The settlement is sacrosanct and is binding on the parties. There is no doubt that it is statutory in nature. The burden to prove implementation of the settlement is squarely on the management. The crux of the settlement to reboot the facts is that all the workman from the previous season would be taken back on duty for the season 1999-2000. Even those as against whom FIRs had been lodged would be taken back on duty. This was to be done category-wise. To faithfully implement the principal settlement, a Committee of four persons was agreed to be constituted of which two persons would be from the management side and two from the workers union. The work of preparing the seniority list of workers was entrusted to the Committee. The predecessor Labour Court on

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-15-

August 25, 2006 framed the following issues to be answered:-

- “1. Whether the termination of services of the workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to be reinstated in service with full back wages and all the benefits including the continuity of service? OPW*
- 2. Whether the workman has no locus-standi to file the present claim statement? OPM*
- 3. Whether the claim statement is not maintainable in the present form? OPM*
- 4. Whether the workman has no cause of action to file the present claim statement? OPM*
- 5. Whether the petitioner-workman has not approached this court with clean hands as he has mentioned false facts in his claim statement? If so its effect? OPM*
- 6. Relief.”*

10. Issues No.1 to 3 were regarded as inter-related and were jointly discussed in the impugned award and accordingly findings were returned. Issues No.4 & 5 were decided in favour of the management for the reason that *a priori* findings on issues No.1 to 3 were decided against the workman.

11. I have read the award in great detail with the assistance of the counsel. The entire case of the workers is that the settlement entered into by the parties under Section 12 (3) of the Act on December 03, 1999 deserves to be implemented as it was sacrosanct and statutory in nature. The Labour Court adopted the following facile reasoning, found in para.22 of the award which reads as under:-

“22. Even otherwise, from the documents placed on record of this file in the shape of Ex M1/1 i.e. letter dated 26.09.2000 written by the management to the Labour

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-16-

Inspector, Ambala, Ex W1/3 i.e. office order dated 05.12.1999, Ex MW4/1 i.e. the list of the workers advised to report for duty w.e.f. 05.12.1999, Ex MW1/5 i.e. the letter dated 07.12.1999 written to the Labour Commissioner, Haryana, Chandigarh by the management, Ex M1/6 i.e. letter dated 07.12.1999 written to the Labour Commissioner, Haryana, Chandigarh written by the management, Ex M1/8 i.e. letter dated 09.10.2000 written by the Labour Inspector to the Labour-cum-Conciliation Officer, Ambala by the management, Ex M2/4 i.e. the letter dated 26.09.2000 written by the representatives of the workers to the Labour Commissioner, Haryana, Chandigarh., Ex M2/6 i.e. letter dated 15.11.2000 written by the Labour-cum-Conciliation Officer, Ambala to the Labour Commissioner, Haryana, Chandigarh, and Ex M2/7 dated 13.11.2000 written by the Labour Inspector to the Labour-cum-Conciliation Officer, Ambala it is apparently clear that the respondent-management asked the workers to report for duty, however, except 12 workers none of the remaining workers including the petitioner-workman resumed his duty which goes to show that the respondent-management implemented the settlement in question asking the petitioner to report for duty, but except 12 workers none approached the respondent-management personally or in writing by making request to take on duty. Had the petitioner-workman and other workers were in the jail as alleged by them during that period even then they were at liberty to make the representation through someone to the respondent-management but again admittedly no such efforts were made by the petitioner-workman in this regard thus every credence has to be accorded to the statement made by the management in this regard and various documents placed on record by the management in support thereof. Therefore, the petitioner-workman on this score also just cannot be held entitled to any relief what-so-

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-17-

*ever as the provisions of the industrial Dispute Act were
not applicable.”*

12. Correspondence between the Government in the Labour Department and the management and vice versa is not clinching evidence regarding implementation or non-implementation of the settlement. The Labour Court could not have undermined and side stepped the settlement as though it did not exist or was rubbish. The labour court did not understand the value of this sacred document upon which the cornerstone of the edifice of industrial peace and harmony rests and which settlement has the binding force of law.

13. The Labour Court holds that except for 12 workers none of the other workers approached the management personally or in writing by requesting them to take them on duty. This is very puerile reasoning not expected from a judicial officer at the level of the superior judicial service. Implementation of a settlement under Section 12 (3) is not a bowl in a beggar's hand asking for alms. The Labour Court goes even to the extent of holding that even if the workers were in jail they still had liberty to make a representation through someone to the management but no such effort was made. From this, an inference is drawn that “every credence” had to be accorded to the statement made by the management when it said through its oral testimony that it had offered appointment as per settlement and, therefore, the settlement stood implemented. This was wholly incorrect reasoning adopted as none of the letters/correspondence mentioned in

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-18-

para.22 of the award could have been the foundation of forensic reasoning for holding that the settlement had been implemented as an accomplished fact established on record. The reasoning holds no water and deserves to be set aside.

14. The Labour Court has further found as a “fact” that Bhupinder and Kuldeep participated in the Committee proceedings in accordance with the settlement but the petitioner did not attend the Committee meeting or represented before it, to consider his case, and from this the Labour Court draws a baseless assumption that the petitioner had knowledge of the proceedings of the Committee in which two of his co-workers had participated, but he must fail because he did not approach the Committee by making a representation. There is nothing in the settlement dated December 03, 1999 to indicate that workers would have to go with the beggars' bowl to the Committee to ingratiate themselves in order to request re-employment in the coming season which was a right created by the settlement and required no further representations to be made being all encompassing in nature as it stood. The Labour Court committed patent error of reasoning on the issue. Irrelevant considerations have crept in while returning a fallacious finding that the petitioner-workman has not pleaded nor proved that the settlement dated December 03, 1999 was never honoured by the management. The rules of evidence has been wrongly applied with full force to non-suit the petitioner/s even when the strict rules of evidence are not applicable to industrial adjudication where the labour court is free to

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-19-

apply follow such procedure as it thinks fit but which are in consonance with the principles of natural justice. Ramesh Kumar, WW-1 cross-examination was twisted out of proportion and context by the labour court. The deposition of the witness was in the following words: *“mujhe jaankari hai ki 03.12.1999 ke samjhote mein Bhupinder and Kuldeep sharamiko ke partinidhi the. Samjhote par mere sign hai. ... Main kabhi committee ke pass na gaya tha our na hi maine committee ko apna case likh kar diya tha. Mujhe yah bhi na pata hai ki 40 mein se 12 aadmi duty par chale gai ho baki na gai ho.”*

15. Ramesh Kumar, WW-1 had deposed that Bhupinder and Kuldeep represented the Union in the settlement. But he did not sign the settlement. The labour court did not ask itself whether he was even expected to do so, when the Union was duly represented by seven of its members as its office bearers. If he did not approach the Committee was he expected to abide by the settlement? The answer is an emphatic- No.

16. The Labour Court should have understood that the settlement was a result of trade union activity and was a result of collective bargaining where individual signatures are not necessary nor are individual actions meaningful to claim the benefits of the settlement, which stands on its own statutory strength and remains enforceable as a sacrosanct settlement of disputes. It is the sacred duty of the management to give effect to the settlement in letter and spirit being a signatory and party to the compromise.

The management should have produced outward letters addressed to all the

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-20-

aggrieved workers offering them the protection of re-entry in terms of the settlement and not strictly in view of Section 25-H of the Act though that provision renders supporting strength to the re-employment. The Labour Court used negative process of reasoning to try and establish the positive which is not proper application of law, logic or experience. It is of no consequence whether claimants' witness knew or pleaded ignorance of the meetings convened on December 04, 1999, December 05, 1999 and December 06, 1999 when the Union was represented by two of its representatives in terms of the settlement in the committee. None of them were required to appear before the Committee except to ratify the priority/seniority list since the only task the Committee was detailed to do was to draw a seniority list of the workers of the previous season so that they could be recalled seniority-wise, which was the pith and substance of the settlement. It is not known from where the Labour Court has used such expressions like "clear-cut admission"; "categorically denied"; "did not completely denied"; "showed his ignorance"; "truth in this regard also oozed due in its glaring form when the petitioner workman during his cross-examination conceded that" (from quote, supra) and lastly and the the unkindest cut of all is when the Labour Court records in para.23: "that the petitioner has filed the present claim statement just by way of willfully and intentional taking up false and frivolous pleas". This reasoning has been harnessed to the issue of locus standi to file the claim statement. The Labour Court has held that the claim statement is not maintainable. Statements of

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-21-

claim in Labour Courts are pleadings, the Labour Court should have understood. It is one thing to say that the reference is not maintainable but it is quite another howler to say claim statement is not. The Labour Courts must use legal words and not speak in hyperbole and use words torn out of context without understanding the text and the context in which they are employed in putting thoughts, ideas and legal principles on judicial paper which composes the award of a labour court. The language is always the controlling factor of reasoning and the thought processes can only be fathomed in words that flow into sentences, and in such manner legal ideas emerge which are to be reviewed by superior courts exercising judicial review. The work of the Labour Court in the present cases is more than dissatisfactory and the award/s cannot be sustained as legal and valid. I fail to understand, where was the question of introducing the concept of Section 2 (oo) (bb) in this case. The provision had no place in the scheme of things while the only issue before the court *a quo* was non-implementation of the settlement which led to unlawful terminations en masse by an insensitive management dealing with welfare legislation and its beneficial provisions.

17. The other plea of management which deserves to be noticed is when it pleaded before the Labour Court that disgruntled workers have started an agitation which was supported by outsiders and leaders of other Sugar Mills in the State clamouring for settlement of the demands of the workers on October 14, 1999 with a definite aim to disturb smooth

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-22-

beginning of the crushing season commencing in November 1999. The management even approached the Civil Court to obtain an ad-interim injunction in a civil suit for declaration and mandatory injunction in which a temporary injunction was granted on November 25, 1999 clamping trade union activity, unless it turns violent, which is not the case pleaded or proven. The workers who had been attributed use of filthy and abusive language were to tender written apology to the management but not even a single person involved in sloganeering came forward to tender the apology in writing and to join duty. The management stated that notices were displayed on the notice board of the factory but the petitioner never turned up. Though the Labour Court has tilted the balance in favour of the management but it is not supported by concrete evidence.

18. The Labour Court mistakenly relied on the decision of the Supreme Court in **Bhogpur Co-operative Sugar Mills, Ltd. vs. Harmesh Kumar**, AIR 2007 SC 288. In this case, there was no settlement arrived at between the parties. The settlement in the present case was itself a substitute for the rights under Section 25-H of the Act without actually saying as much. In one sweeping statement the Labour Court has held that none of the sections i.e. Sections 25-F, 25-G & 25-H apply to the instant case and the termination does not amount to retrenchment. The issue, in the present case, was not of the status of seasonal workers or of non-completion of 240 days of service in the preceding 12 calendar months from the date of termination but the issue was one of implementation of settlement arrived at under

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-23-

Section 12 (3) of the Act during conciliation proceedings to resolve the dispute with the functionaries of the Labour Department, Haryana at hand guiding a durable settlement between the disputing parties. Therefore, the law in cases cited in para.19 of the award with respect to the exception in Sub-section (bb) of Section 2 (oo) are inapplicable to the facts of the present case in the presence of a settlement which is binding between the parties, arrived at voluntarily without any coercion from any quarters. The present is not a case of workman recruited in the beginning of the crushing season on daily wage basis and the employment terminated at the end of the season as was the case in *Harmesh Kumar*.

19. Had the Labour Court read the decision in *Harmesh Kumar* correctly it would have known that the Labour Courts derive their jurisdiction by the terms of the reference and has to exercise its authority within the four corners thereof. The principal question referred by the State Government was as to whether the termination of services of the workman was justified or not. In answer to this question the impediment in the way of granting relief to the management was the settlement itself when it was bound by the matter settled. It was the settlement which had to be honoured scrupulously and it could not have been defeated by subterfuges and hair-splitting the evidence on record and deriving incorrect inferences from it. The question was not as to who were the juniors to the petitioners retained in service and on this point, the Labour Court sadly misdirected itself. The learned authorized representative of the workman was justified in arguing;

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-24-

as noticed in para. 20 of the award, that even if the management was a seasonal factory and the petitioner a seasonal worker, this position would not adversely affect the case of the workman/workmen as the present controversy revolves around the implementation of the settlement dated December 03, 1999 which was born out of strife and which was legally permissible action in collective bargaining to restore peace and harmony in industrial relations disrupted by the management when it bypassed the settlement. The question referred was not whether the strike or dharna was justified or unjustified, legal or illegal and it is for this reason that relief to these seasonal workers is justified and was unjustly denied by the court below. This Court has not even a lingering doubt in mind that the Labour Court did not fully appreciate the case before it and deflected the course of justice by brushing the settlement under the carpet and returning superficial findings which are not based on evidence produced by the parties. The other fault lies in gross misreading of the evidence and, therefore, the impugned award is not sustainable and deserves to be set aside as it presents multiple errors of perverse and irrational reasoning which are apparent on the face of the record. The errors are fundamental in nature and interference is warranted in the impugned award/s. Mr Goel for the management has not been able to put forth any substantial contention at the hearing for denial of relief of compensation or its quantification as proposed and assessed hereafter.

20. **Relief**

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-25-

Mr. J.S. Bedi, learned counsel appearing for the petitioner-workmen in this case and in the connected cases has produced in Court the Provisional Attachment Order dated December 31, 2014 passed under Section 5(1) of the Prevention of Money Laundering Act, 2002 against the respondent Mill. The same is taken on record as Mark 'A'. He further submits on information received from some of his clients that the interim order has to be made final some time this year. It is his submission that this has a material bearing on the functioning of the respondent Mill and in case, the writ petitions find favour of this Court and succeed by grant of relief including monetary relief then such monetary relief by way of back wages in case awarded by setting aside the impugned awards or compensation instead, should have the protection of priority envisioned in Section 525 of the Companies Act, 1956 (Old Act) which gives preferential right to wages over other secured and unsecured creditors. Mr. Goel can offer no resistance on this point.

21. The management has changed hands and the new directors are embroiled in commission of crime of money laundering as found in the order dated December 31, 2014 which provisionally attaches the respondent No 2 Mill's plant including its land, building and machinery mentioned in the Schedule placed below the order.

22. In these circumstances, both counsel are broadly agreed that there can hardly be any question of reinstatement to service in these set of cases. It is also clear that the workman has been put through 16 years of

CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013

-26-

wasteful litigation only on a short point regarding implementation of the settlement. They have been wronged for 16 years and have been deprived of their livelihood. It is not a case where they deserve no relief whatsoever. On the other hand, they have a case for compensation in lieu of reinstatement. The period for which they deserve to be recompensed by payment of compensation is from the date of retrenchment/termination of their services in 1999-2000, therein applying the compensation standards in **Assistant Engineer, Rajasthan Dev. Corp. & Anr vs. Gitam Singh**, (2013) 5 SCC 136; **BSNL vs. Bhurumal**, AIR 2014 SC 1188; **BSNL vs. Man Singh**, (2012) 1 SCC 558 etc. and the Division Bench judgment of this Court in **Municipal Council, Dina Nagar vs. Presiding Officer, Labour Court, Gurdaspur and another**, 2015 (1) RSJ 765. The quantum of compensation may be suitably measured on the above standards in judicial precedents, and that too for restitution of loss of 16 years in wilderness ending December 31, 2014, when the provisional attachment order was passed by the Authority under the Prevention of Money Laundering Act, 2002 rendering reinstatement a mirage. Just and appropriate compensation deserves to range from about 8 lacs to 15 lacs for the number of years of service ranging by approximation from the monetary dispensation in *Gitam Singh* and *Dina Nagar* cases. However, to strike an equitable balance by making suitable allowance for seasonal workers what was proposed and debated at the hearing was an amount of Rs.12 lacs per worker but on pondering over the matter of relief and reconsidering the matter in all its aspects, this Court is

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-27-

of the view that a sum of Rs.10 lacs as compensation would be adequate and reasonable and the appropriate golden median synthesizing compensation packages in recent dicta.

23. Mr. J. S. Bedi submits and quite correctly when he refers to his grounds in the petition at 'F' pleading that the labour court faltered in denying relief on erroneous reasoning. There is substance in his contention on ground taken which is reproduced below:-

“F. That the observation of the Ld. Labour Court that it was the petitioner workman who did not report on duty was also devoid of merits as it not only runs against its own observation made in the Award itself, the evidence on record produced by the management as well as the petitioner but also to the categorical observation made by this Hon'ble Court in its remand order dated 01.05.2008, a copy of which is annexed herewith as Annexure P-2 for the kind perusal of this Hon'ble Court. The Ld. Labour Court in the impugned award itself has elsewhere observed that it was evidently clear that the worker throughout was running from pillar to post to agitate the grievances and never left/abandoned the job at his own sweet will as alleged by the respondent management. Even the witness of the respondent management MW-4 categorically states in his cross examination that at no stage of the proceedings either before this Hon'ble Court or Ld. Labour Commissioner or Ld. Conciliation Officer or before the Ld. Labour Court itself, an offer was made to the petitioner workman to join duty. So much so that even WW-2 Didar Singh, Security Supervisor of respondent management itself categorically stated that the committee was not constituted properly, the respondent management kept only its own men and the workers were never called to

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-28-

join duty. Even this Hon'ble Court vide its Order dated 01.05.2008 in CWP No.605 of 2008 whereby this Hon'ble Court had expressed surprise to the conclusion of the Labour Court that the workman deliberately, intentionally and willfully had not reported for duty and by observing that such a finding cannot be sustained as it goes one way to dislodge the claim of the workman without appreciating the entire gamut, set aside the award of the Labour Court and remanded it back. As such the observation of the Ld. Labour Court goes against the evidence on record from both the sides, its own findings as well the findings of this Hon'ble Court in CWP No.605 of 2008 and infact a reproduction of its earlier Award already set aside by this Hon'ble Court and thus not legally sustainable.”

24. As a result of the above discussion, this petition is partially allowed. The award of the Labour Court is set aside. Reinstatement is denied. However, compensation in lieu of reinstatement assessed at Rs.10 lacs per worker in each individual case is held due and payable against the management as the petitioner/s have been put through unwarranted litigation and they have been made to run from pillar to post, and fight an unsavoury battle for the last 15-16 years at considerable expense which must have been incurred by the petitioners throughout the proceedings. The management is also held liable for costs of Rs. 5 lacs cumulatively in all the cases which will be apportioned equally amongst all the workers in these petitions and the same be paid to them. The amounts assessed as compensation and composite costs as before will be made available to the petitioners within four months from the date of receipt of a certified copy of

**CWP No.13359 of 2011,
CWP No.12290, 12291, 12292, 12293, 12295, 23132, 23175,
23199, 23207, 23070, 23071, 23072, 23076, 23080, 23081,
23109, 12299, 23061, 23063, 23067, 23068 and 23069 of 2012
CWP Nos.3079 of 2013**

-29-

the order. A compliance report be submitted at the end of the period for the
perusal of the Court.

**(RAJIV NARAIN RAINA)
JUDGE**

28.10.2015
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