

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19297 of 2009

Date of Decision: 11.09.2015

Lajja Ram

... Petitioner

Versus

The Presiding Officer, Labour Court,
Ambala and others

... Respondents

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

Present: Mr. Mayank Sharma, Advocate,
for the petitioner.

Ms. Vibha Dhiman, AAG, Haryana.

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

RAJIV NARAIN RAINA, J.

The petitioner had to his credit more than 16 years of continuous service with the respondent management when his services were abruptly terminated on June 18, 2004 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 ("the Act"). Notice pay and retrenchment compensation were not paid when the axe fell. He raised a dispute by serving a demand notice. Conciliation proceedings failed before the conciliation officer who submitted his failure report to the appropriate government. Reference followed to the Presiding Officer, Labour Court, Ambala. The reference has been declined for the reason that the workman has not been able to adduce cogent and sufficient evidence on the file to prove that the termination of his services by the respondent was

illegal and invalid. In para.17 of the award dated October 16, 2008 the Labour Court has returned the positive finding that the petitioner had worked for more than 240 days with the management during the relevant period but that alone would not entitle him to reinstatement along with consequential benefits in view of the law laid down in **Gangadhar Pillai vs. Siemens Ltd.**, (2007) 1 SCC 533; **M.P. Housing Board and another vs. Manoj Shrivastava**, (2006) 2 SCC 702 and **Indian Drugs & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.**, (2007) 1 SCC 408 that mere completion of 240 days of continuous and uninterrupted service does not entitle a workman to regularization of service or conferment of permanent status and that too by court orders.

In the considered opinion of this court reliance on the aforesaid judgments is wholly misconceived on the part of the Labour Court since petitioner had not sought regularization of service or permanent status nor were these issues referred to the Labour Court for determination by the referring authority which was save and limited to whether the termination order was legal and valid and what relief the workman may be entitled to in case, it was flawed.

The Labour Court again misdirected itself on the strength of the ruling in **Secretary, State of Karnataka vs. Uma Devi**, (2006) 4 SCC 1. The petitioner's case could not have been buried in the tidal way of *Uma Devi's* case which is binding authority on what the High Court and the Supreme Court might do in the original writ jurisdiction under Articles 226 and 32 of the Constitution as against its power of judicial review of orders passed by Labour Courts and Tribunals which are governed by labour law

jurisprudence which is different in quality and scope. When the labour court relied on **Uma Devi** case the view of the landmark view of the Supreme Court in **Maharashtra State Road Transport Corporation Ltd. vs. Casteribe Rajya P. Karmchari Sanghatana**, (2009) 8 SCC 556 was not available to the Labour Court when it passed the award in the year 2008 but the authoritative pronouncement of the Supreme Court has turned the tide in labour laws and returned it to its original freedom under the ID Act to deliver social justice to the lowly and the down trodden. It has been held in **Casteribe** that the ruling in **Uma Devi** case has no place in labour laws as administered in Labour Courts and Tribunals in India. The pronouncement in **Casteribe** came on August 28, 2009 after the impugned award was made and it could not profit from the view and therefore it is not at culpable fault.

On the issue of the effect of departure from the mandates of the ID Act provided in Sections 25F, 25G and 25H the legal position stands enunciated in a spate of judicial pronouncements from the Supreme Court in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192, **Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, 2010 (3) SLR 663, **Devinder Singh vs. Municipal Council, Sanaur**, (2011) 6 SCC 584 and **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324, **Jasmer Singh v. State of Haryana**, (2015) 4 SCC 458 and **Tapash Kumar Paul vs. BSNL and another**, 2014 (3) SCT 106.

It cannot be lost sight of in this case that the petitioner had worked as a daily wager in the Forest Department for 16 long years when

his services were terminated without complying with the law. Management Witness-1 appeared in the witness box and during his cross-examination he admitted by deposing that: *“yeh theek hai ki vadi ki hazri kabhi muster rolls par va kabhi kache va kabhi pakke par lagaiee jatti thee.”* The Labour Court read the cross-examination and held that it was inherently established that the days spent in service by the workman has not been properly calculated in the statement of working days furnished by the management in the document Ex.M-1. The labour Court held that the evidence of the workman is not belied when neither cogent nor reliable evidence was placed on the file by the management to propound its case for rejection of the reference. Moreover, not even a suggestion was put to the workman in his cross-examination that the details of the working days given by him are incorrect.

The Court *a quo* at the end of the day held on facts that the petitioner had completed continuous and uninterrupted service of 240 days with the management in conformity of the principles in Section 25B of the Act. Having reached this crucial conclusion on evidence, the Labour Court misled itself by diverting its attention unnecessarily to non-suit the workman on account of his failure to produce any reliable evidence on the court file that he was appointed by the management against a sanctioned or regular post and that too after following the procedure prescribed in rules to make such appointments. The Labour Court blindly applied the law in **Himanshu Kumar vs. Vidyarthi and others vs. State of Bihar and others**, AIR 1997 SC 3657 and **HUDA vs. Jagmal Singh**, (2006) 5 SCC 764. These decisions of the Supreme Court have been noticed in some of the

the rulings cited above and distinguished and the law declared as it stood in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 and **Surendra Kumar Verma v. CGIT**, AIR 1981 SC 422 that breach of Section 25-F of the Act would ordinarily lead to reinstatement unless there are reasons necessitating departure which was for the management has to discharge its burden to show but did not do so in this case. In the case of a daily wager, no rule was shown by the management as to how posts are to be filled.

This Court had occasion to deal with the case of a daily wager in the Forest Department in Haryana whose services were illegally retrenched after many years of service, just as in this case, and it was observed that there appears to be large scale exploitation of marginalized labour in plantation, weeding, hoeing and culture operations in forest areas across the State of Haryana. Labour is exploited for many years and then the doors are shut on them forcing them to resort to the tardy process of industrial adjudication which takes many years. This Court examined similar issues arising in **Smt. Chinti Devi vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Distt. Panipat and another**, 2013 (3) S.C.T. 597: 2014 (2) RSJ 3 which view has been upheld in appeal and the directions issued by this Court to reinstate the daily wager to service stand implemented. But while awarding reinstatement and back wages, this Court granted liberty to the Forest Department to recover back wages from those officers who were guilty of misfeasance and malfeasance through disciplinary action, as follows:-

“The Forest Department will remain at liberty to fix responsibility and recover arrears of daily wages payable

to the petitioner from those found responsible for not complying with the mandatory provisions of the Industrial Disputes Act, 1947 and for violating the Government policy as at paragraph 6 of the written statement filed before the Labour Court reproduced above and underlined for emphasis, thereby defeating the lofty claims made in the written statement to deny relief, so that ultimately the public exchequer is not unnecessarily burdened.”

I have no occasion to take a different view than the one I took in **Chinti Devi** where the period of service as daily wager was from October 1995 to July 2004 i.e. nine years. In the present case, the labour spent runs into more than 16 years and I find no reason to accept the argument of Ms. Vibha Dhiman, learned AAG, Haryana that relief should be deprived on the premise that reinstatement should not follow automatically or mechanically, I would not relent in this submission to lean the scales of justice in favour of the defalcating functionaries of the State in the department concerned especially when unfair labour practice as defined in Schedule V of the Act is writ large and is *res ipsa loquitur* and requires no parol evidence, much less documentary to exculpate it from its vicarious liability when the facts and circumstances can be easily taken judicial notice of. It is trite that keeping daily wage employees for long years in far off Nurseries sequestered in remote villages and forest areas in the hinterland where no other substitute labour can easily be found of at least with 16 years experience which itself is an asset to the department better than hiring raw hands who may not see their future in such employment. In **Damyanti v. Presiding Officer, Industrial Tribunal-cum- Labour Court and another**, 2012 (4) S.C.T 506 I had occasion to deal with a similar case again arising in the Forest Department, Haryana. I had observed:-

“A daily wager or seasonal worker too is a workman with industrial rights. No rule was shown to me as to how seasonal workers or daily wagers are recruited. It is inherent that employment in far flung places where the forest department has ongoing works to employ locally available labour. It is no answer that in such employment opportunity there must be public advertisements to satisfy the tests of [Article 14 & 16](#) of the Constitution. In fact it may violate local labour rights to introduce outsiders for menial, unskilled or semi skilled daily wage work in the hinterland. In this context, I think that Articles 14 & 16 cannot be stretched beyond breaking point for the State to contend, as unfortunately it does in routine in such cases, that the appointment is de hors the rule. I ask which rule is violated after exploiting a low paid worker for 15 years and then citing rule of appointment of seasonal workers on daily wages and contending that the Forest Department is not an industry. This is a matter of shame for the forest department to ponder over.”

Taking the totality of facts and circumstances in consideration, this court is of opinion that the impugned award declining relief and dismissing the reference is unsustainable in law. The legal principles applied to decline the reference were facile and truly not applicable to the facts of this case and the judgments relied upon by the Labour Court are clearly distinguishable as reasoned above and the award is not in sync with the re-statement of the law in path finding and path breaking binding authority in **Harjinder Singh and Surwase** cases and the other string of cases spawned sequitur, as noticed above. Then, the award plainly suffers from fundamental flaws that vitiate the award by unacceptable reasoning which cannot be approved. Interference at the hands of this Court has therefore become absolutely necessary to avert a miscarriage of justice.

For the many reasons recorded above, the writ petition is

allowed. The award of the Labour Court is set aside. The petitioner will be reinstated to service forthwith and full back wages are directed to be computed and paid within three months from the date of receipt of a certified copy of this order. Compliance report on both reinstatement and back wages be filed before the Registrar General for the perusal of this Court within one month thereafter in this disposed of petition. In case compliance is made the file be not put up on the judicial side.

(RAJIV NARAIN RAINA)
JUDGE

11.09.2015
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