

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

Date of Decision: 18.09.2015

CWP No.12544 of 2012

Sunil Kumar ... Petitioner
Versus

The Presiding Officer & ors. ... Respondents

CWP No.15476 of 2012

Sishpal ... Petitioner
Versus

The Presiding Officer & ors. ... Respondents

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

Present: Mr. Tara Chand Dhanwal, Advocate,
for the petitioner.

Mr. J.S. Bedi, Addl.A.G., Haryana,

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

RAJIV NARAIN RAINA, J.(Oral)

This order will dispose of two writ petitions bearing Nos.12544 and 15476 of 2012 as common questions of law and fact are involved in them which can conveniently decided by a common order. The facts are taken from CWP No.12544 of 2012 for convenience. The only difference in CWP No.15476 of 2012 is that in this case, the petitioner had worked for 8 years and has been awarded Rs. 35,000/- as compensation in lieu of retrenchment as against Rs 24,000/- for 5 years in the other. Both of them had served the same department on the same job. They served as a Water Supply Motor Operator/Keyman with the PWD,

Public Health Division, Bhiwani from 1.1.1999 to 30.9.2004 in the case of Sunil Kumar when their services were terminated illegally. They have met the same fate in losing their livelihood by arbitrary and illegal action of the functionary of the Government who was responsible for honouring the law but instead breached the law with impunity and wanton disregard of mandatory law in the Industrial Disputes Act, 1947(for short 'the Act').

The Presiding Officer, Industrial Tribunal-cum-Labour Court in his award dated 21.5.2010 has held the termination of the service of the Sunil Kumar workman was vitiated due to non-compliance of Section 25-F of the Act rendering the retrenchment illegal for want of following due process but has declined to award reinstatement with continuity of service and instead has granted compensation of a meager amount of Rs.24,000/- in lieu of reinstatement. Shish Pal has done no better.

The petitioners are before this court in a challenge to the awards of the Labour Court. It is argued for them that neither were any reasons assigned to justify the cessation of service by a notice, notice pay of one months wages nor was retrenchment compensation paid the them at the time of retrenchment.

The awards were made at the stage when law was nebulous and the recent trend of decision of the Supreme Court in cases such as **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192; **Anoop Sharma v. Executive Engineer Public Health Division No 1, Panipat, Haryana**, (2010) 3 SCC 497; **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors**, (2013) 10 SCC 324; **Jasmer Singh vs. State of Haryana and**

another, (2015) 4 SCC 458, and **Tapash Kumar Paul vs. BSNL & ors.**, 2014(3) SCT 106 (SC) and others, were not available for guidance of the Labour Court which depended on decisions rendered in the earlier stream of thought which has been called a “visible shift” in the latest judgments of the Supreme Court (supra) taking the legal position as it stood in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, 1979 AIR 75, 1979 SCR (1) 563 **Surendra Kumar Verma v. CGIT, New Delhi and another**, AIR 1981 SC 422 and **P.G.I. of Medical Education & Research v. Raj Kumar**, (2001) 2 SCC 54 cases.

The labour Court applied the law of public employment to deny relief of reinstatement that it would not follow naturally and relied inter alia on the judgment of the Supreme Court in **Jaipur Development Authority vs. Ramsahai & anr.**, (2006) 11 SCC 814 which was a case of a daily wager engaged on muster rolls. Reinstatement was denied and compensation of Rs 75, 000/- was instead granted. In **Jagbir Singh v. Haryana State Agriculture Mktg. Board**, (2009) 15 SCC 327, SCC pp. 330 & 335, paras 7 & 14) the Supreme Court in a case involving only 11 months of service prior to termination observed “7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination

of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

In Surwase case (supra) the Supreme Court after noticing the authority in Jagbir Singh case (supra) culled out the following principles of law in para 33 of the report:

“33. The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.
- iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative

fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the

burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in [Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited](#) (supra).

vii) The observation made in [J.K. Synthetics Ltd. v. K.P. Agrawal](#) (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

In the case in hand the Labour Court found on evidence that the workman had completed 240 days of continuous service in the preceding 12 calendar months from the date of termination and this

position was admitted by the witnesses produced by the management. In these circumstances, the Labour Court fell in error in not granting substantial relief and that too without disclosing the line of reasoning to deny the major relief of reinstatement which is the ordinary rule unless there are cogent reasons necessitating departure blindly applying case law without fully understanding the subtle conflict of rationale and the complexities involved, an issue which has also become an everyday ordeal for this Court as to what relief is justified in a given case to deal with a plethora of judgments on the point, the right choice not being easy.

The court a quo relied other than on the Jaipur Development Authority case the judgments of the Supreme Court in **Jagbir Singh** (Supra); **Telecom District Manager & ors. vs. Keshab Deb**, 2008(4) SCT 33 and the Division Bench judgment of this Court in the case of **State of Haryana through Executive Engineer vs. Ishwar Singh & ors.**, 2008(3) SCT 788.

On this process of reasoning, when Labour Court has blindly applied the law without looking to their ratios and the true principle that reinstatement is not to be awarded automatically and when the Supreme Court culled out the principle it meant that there should not be blind adherence to the theory of reinstatement and the Court would still have to go on facts to examine relief on a case to case basis to measure as to what appropriate relief is to be granted in a case. The Public Health Department did not produce any evidence to suggest that there were reasons necessitating departure from the ordinary rule laid down in

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Works Pvt. Ltd., 1979 AIR 75, 1979 SCR (1) 563 which was the rule suffering decomposition till it was brought back to life and vigour in the cases of the Supreme Court referred to next above. If there was a visible shift in the law some decades ago then there is a visible shift in the Supreme court starting at point point of time in 2010 and in this evolution the law declared by the Supreme Court in recent times in decisions supported by the line of reasoning in decisions of the Supreme Court in the cases of *Hindustan Tin Works Pvt. Ltd.* and *Surendra Kumar Verma* as explained in the visible shift rulings then those appear to be representing the working formula which the Supreme Court has commended the High Court to adopt in granting relief in the Harjinder Singh chain of cases. Therefore, in recognition of that guidance, this Court finds that the impugned award cannot be maintained as it begins to suffer from an error which has blocked the judicial mind in its reasoning depriving accrued rights of the workmen on declaration of illegal termination needlessly ousting the major relief awardable instead of minor relief granted by way of a sop in a paltry sum of Rs.24,000/- for 5 years in one case and Rs. 35, 000 for 7 years of service in the other, rendered as Water Supply Motor Operator/ Key Man in the Public Health Department, Haryana, which is no more than a glorified Beldar on daily wages.

It may be noticed that the Learned counsel for the petitioners also relies on a Division Bench decision of this Court in **Harjinder Singh vs. Director Animal Husbandry, Punjab & ors.** in LPA No.361 of 2011, decided on 12.10.2011 to claim further relief.

For the aforesaid reasons, interference is called for in the

awards of the labour Court and as a result both the petitions are allowed.

The impugned awards are set aside. The petitioners are reinstated to service with continuity. However, they would be entitled to 50% back wages which appears the just and equitable cut to serve the ends of justice but which will run from the date of termination till realization as the dispute was raised within reasonable time by serving a demand notice on the management. The awards stand modified accordingly. No interest. No costs.

(RAJIV NARAIN RAINA)
JUDGE

18.09.2015
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