

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20066 of 2010

Date of Decision: 18.08.2015

M/s Blue Stampings and Forgings Limited

... Petitioner

Versus

The Presiding Officer, Industrial Tribunal cum  
Labour Court III, Faridabad and another

... Respondents

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

Present: Mr. Shiv Kumar, Advocate,  
for the petitioner.

Mr. Jagjot Singh, Advocate,  
for Mr. Kunal Dawar, Advocate,  
for R-2.

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

**RAJIV NARAIN RAINA, J.**

The management has filed this writ petition against the award dated July 21, 2010 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-3, Faridabad. Reference No. 381 of 2003 had been answered in favour of the workman and reinstatement with continuity of service has followed. But he has been granted only 10% of the back wages. The respondent workman is not aggrieved by the award of 10% back wages since he has not challenged the award. He was retrenched on January 28, 2003 after putting in about two years and ten months of service.

Indisputably, the termination was caused without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947

inasmuch as neither notice nor wages in lieu of notice and retrenchment compensation was paid at the time of termination of services. The defence of the management was that the petitioner had resigned from service but they did not produce the resignation letter in evidence on the pretext that in the meantime, the resignation letter lying in an office file was lost by termites. The stand in the alternative was that the workman had abandoned his services. This version has not found favour with the Labour Court for good and sufficient reason. The court *a quo* has properly based its conclusions after appreciation of evidence adduced by the parties on the file. If the defence of the management is not truthful then it cannot take any advantage of the equitable jurisdiction of this Court under Articles 226 & 227 of the Constitution of India. The theory of resignation and abandonment at the same breath are destructive of each other and cannot be reconciled. As far as non-compliance with the mandatory provisions of section 25-F is concerned it would profit to remember the words of the Supreme Court in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 which are:

*“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as*

*a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen*

*ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them."*

**In Pramod Jha v. State of Bihar, (2003) 4 SCC 619** the Supreme Court observed:-

*"The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment."*

Three of the six propositions or principles culled out from past precedents in paragraph 33 of the ruling in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324 read as follows:-

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.”*

In the same strain and chain of thought is the ruling in **Jasmer**

**Singh v. State of Haryana**, (2015) 4 SCC 458 in which case reinstatement

order passed by the labour court was upheld with full back wages for a service tenure of one year as a daily-rated worker and the decision of the single judge and the appellate bench was set aside which had declined relief of reinstatement.

In any rate, I find from the motion order itself when passed on November 11, 2010 that the court was not inclined to interfere in the matter and notice was issued only on the request of the management that reinstatement be ordered and instead and in lieu thereof adequate and reasonable compensation could be given to the workman by the management.

Today, at the hearing, I asked the learned counsel for the workman whether he will be satisfied if this court awards compensation in lieu of reinstatement but he has instructions to state that the workman is not interested in compensation or further back wages but on reinstatement which is evident from the fact that he has not assailed the award or claimed one hundred percent back wages or anything more than the awarded amount. This court is thus to decide the case on merits keeping in view the dicta in the rulings as above and the evidence on record. Both clearly indicate that retrenchment was effected without due process of law. Management failed to lead evidence to show that the workman was gainfully employed during the period of the litigation even when the workman said he was not. The onus was on the management to show reasons necessitating departure from the normal rule of reinstatement as explained in the Supreme Court cases (supra). The challenge was not taken up by the management before the labour court nor was the onus discharged

by it and therefore it must fail.

Hence, I find no reason to interfere with the award of the Labour Court which appears just, fair and proper.

The petition is accordingly dismissed.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**18.08.2015**  
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