

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP NO.16487 of 2012 (O&M)

Date of decision: 4.9.2015

District Education Officer, Jhajjar and Anr.

...Petitioners

Versus

Raj Pal and Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Vibha Dhiman, AAG, Haryana for the petitioner

Mr. Sandeep Singal, Advocate for the respondent

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 petition is directed against the award dated 2nd December, 2011 passed by the Industrial Tribunal-cum-Labour Court, Rohtak whereby the workman has been reinstated to service with continuity and 50% back wages.

I have heard learned counsel for the parties and perused the paper-book.

The period of service rendered by the workman as Water Carrier with the Management is from 4th September, 2003 to 28th February, 2005. Aggrieved by the termination/retrenchment, the workman raised an industrial dispute by serving a demand notice on the Management on 2nd May, 2005 with copies to the Labour Inspector etc. There was no delay in raising the dispute. Conciliation failed and a failure report was submitted to the Government containing reasons which led to the failure to arrive at a settlement. The appropriate government accordingly made a reference to the Presiding Officer, Labour Court, Rohtak vide Ref. No.24 of 2006 for adjudication of the dispute.

The workman complained that the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short “the Act”) were not complied with and he was neither served notice before retrenchment nor was paid 30 days wages in lieu of notice nor any retrenchment compensation was paid at the time of termination of service. The employer was not a private organization. It was a department of the State of Haryana and it was expected to comply with the statutory mandate of the Act.

The Labour Court has come to the conclusion that the workman has completed 240 days of service in the 12 calendar months preceding the date of termination. There could be no better admission than the deposition of WW-2 Prem Singh who was none other than an official witness of the Management summoned by the workman to depose to facts. WW-2 Prem Singh admitted that the workman had put in 240 days of service. He admitted that the termination was brought about without compliance of the mandatory procedure and statutory protections provided under Section 25F of the Act. The post of Water Carrier from which the workman was retrenched, has not been abolished rather one

Smt. Bala Devi is working as Water Carrier on full time basis. In the face of this admission, the jurisdictional facts of 25F and 25G have been established on record and there appears to be no valid reason to accede to the submission of Ms.Vibha Dhiman, learned AAG, Haryana that the impugned award is onerous and is not called for since the services of the workman were for a fixed tenure which was less than 1 ½ years. If the argument of the learned counsel for the State is accepted, then it would be putting a premium on dereliction of duty in the department to have not complied with the procedure laid down in the Act. In any case, interference with the impugned award of the Labour Court is restricted to the guidelines laid down in the Constitution Bench decision of the Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477 where interference would only be if there is a fundamental flaw or error in applying the law or misapplying the evidence and facts which should all put together amount to an error apparent on the face of the record. I find nothing in the impugned award that would vitiate it for any of the reasons adopted by the Labour Court in coming to the conclusion that it was a fit case of reinstatement. The Labour Court has exercised its discretion by reducing back wages to 50% which is substantial relief to the petitioner-Management and takes care of the argument raised by Ms.Dhiman, learned counsel for the petitioner that the workman was on part time basis in a school which had to close down during summer and winter breaks. Exclusion of payment of salary during vacations period was firstly castigated by the Supreme Court in **Rattan Lal and others vs. State of Haryana and others**, (1985) 4 SCC 43. In that case, it was held that the lecturers appointed on ad hoc basis were entitled to the benefit of the salary during the period of vacations which they could not

be deprived of. Besides, the principle of calculation of 240 days of service is indicated in a judgment of the Supreme Court rendered in **Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation**, AIR 1986 SC 458 and in computing 240 days, Saturdays, Sundays, paid holidays etc. are to be included in the 240 days. Therefore, on both the principles of Labour and Service Law, the workmen have eminently put in 240 days of qualifying service as referable under Section 25-B of the Act.

I would, therefore, find neither any jurisdictional error in the decision of the Labour Court and nor is it found vitiated by an error of law apparent on the face of record. The findings of the Labour Court are neither perverse nor irrational. Findings of fact recorded by the Labour Court are not open to be disturbed in writ jurisdiction under Articles 226/227 of the Constitution of India.

For the foregoing reasons, I find no ground meriting interference with the award of the Labour Court. This writ petition is accordingly dismissed.

(RAJIV NARAIN RAINA)

JUDGE

4.9.2015

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