

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

Civil Writ Petition No.14550 of 2013

Date of decision: 19.2.2015

Gurmail Singh

... Petitioner

Versus

Chief Superintendent and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.G.S.Bawa and Mr.R.K.Gautam, Advocates
for the petitioner.

Mr.Gautam Jindal, Addl. AG, Haryana.

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

RAJIV NARAIN RAINA, J.

This writ petition has been filed by the petitioning workman challenging the award dated 21st February, 2007 passed by the labour court. The petition was filed on 19th May, 2007 as borne by the stamp of the dealing assistant of this Court. On 19th May, 2007, an objection was put by the Registry that the second set of the paper-book complete in all respects should be filed. No steps were taken for listing of the case till 29th April, 2013, by which time; the second set was not required to be filed since the writ petitions came to be listed before Learned Single Benches of this Court. When the petition was ultimately refiled further objections were raised by the office and the petition was again filed after removal of those objections

on 9th July, 2013. On 11th July, 2013, it was explained before the Bench, at the preliminary hearing on the petition, that the paper-book had got misplaced and could be traced only in 2013 by the learned counsel for the petitioner. A co-ordinate bench was pleased to issue notice of motion for 7th October, 2013 on the contention that when a clear finding has been recorded by the Labour Court that the management adopted unfair labour practice, then the plea taken that the petitioner voluntarily left the job raised on behalf of the management was not accepted by the Court *a quo* and, therefore, the petitioner was entitled to reinstatement instead of awarding him the limited relief of compensation of a paltry ₹ 20,000/- in lieu of reinstatement. Apart from the finding of unfair labour practice as described in the 5th schedule of the Industrial Disputes Act, 1947 (in short, “the Act”), the Court also found the termination effected in the year 2001 stood vitiated due to non-compliance of the provisions of Section 25-F of the Act. Despite recording these two vital findings, the Labour Court yet declined reinstatement and awarded a meagre amount of ₹ 20,000/- as compensation for 3 years of service rendered as a Helper-cum-Driver in Government Livestock Farm at Hisar. To make matters worse, there was another workman, a colleague of the petitioner, who was similarly situated working in the same establishment, who had received relief from the Division Bench of this Court in CWP No.10829 of 2006 titled *Sector Superintendent-I, Government Livestock Farm, Hisar v. Suresh and another* where a similar termination order was set aside and the workman was reinstated with 50 percent back wages and the findings of unfair labour practice recorded by the Court *a quo* were upheld by this Court. The decision was rendered on 20th July, 2006, the text of which is placed at Annexure P-3 starting from

page 27 of the paper-book. Even in the matter of grant of relief, the principles of equality enshrined in Article 14 of the Constitution would apply so that similar treatment is accorded to similarly situated persons in a non-discriminatory manner especially where the substance of the dispute is substantially the same and raised with the same employer. In such a case, it is not enough for the management to urge that reinstatement is not automatic as was contended by the learned State counsel citing **Assistant Engineer, Rajasthan Development Corporation and Another Vs. Gitam Singh**, 2013 (5) SCC 136. Although reinstatement may not be an automatic or a compulsive reflex of the Court but all the same is a vital factor in industrial adjudication in moulding the relief, the principles of which are to be applied on a case to case basis and the overarching demands of justice in a cause. Where the Court has already expressed an opinion in a similar matter, the petitioner would be entitled to similar relief so as to accord parity of treatment so that the spirit of equal protection is not thrown to the winds and Article 14 emasculated in its vigour.

2. It is trite law that where the termination is in gross violation of the Section 25-F of the Act, a workman cannot be denied reinstatement by normal circumstances. Cf. **Anoop Sharma v. Executive Engineer Public Health Division No.1, Panipat (Haryana)**, (2010) 3 SCC 497 and **Harjinder Singh v. Punjab State Warehousing Corporation**; (2010) 3 SCC 192 where the principles of Section 25-F have been extended to Section 25-G of the Act, the binding opinion of the Supreme Court based on violation of both the procedural laws as conditions precedent to valid termination. One may also see the Division Bench decision of this Court in

The Principal Chief Conservator of Forest, Panchkula and another v.

Ram Karan and another; 2012 (4) SCT 645 : 2012 (8) SLR 794 where numerous pronouncements of the Supreme Court have been noticed including **PGIMER v. Raj Kumar**, (2001) 2 SCC 54. More recently, the Supreme Court have applied the principle on January 13, 2015 in **Jasmer Singh v. State of Haryana and another** in Civil Appeal No.3456 of 2015 arising out of SLP No.1532 of 2014 relying on the principles laid down in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & Ors**; (2013) 10 SCC 324 where it was observed : -

" The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed

and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

3. In the facts and circumstances, the petition is allowed and the impugned award of the Labour Court is not found sustainable in law and is, therefore, set aside. The petitioner is reinstated to service. However, the petitioner is denied back wages from the date of the award, i.e., January 21, 2007 till July 11, 2013, the date of first hearing on the petition as this period should not work unjustly to the monetary disadvantage of the management on the principle of 'no fault' of theirs but that would not be ground to deny back wages from September, 2001 i.e. the date of illegal termination till the date of award and running again after July, 2013 for which periods the workman is held entitled to 50% back wages. This, to my mind, would secure a proper balance between the competing interests of both the parties. However, the period of hibernation of the petition for 6 years will be treated as *dies-non* for all intents and purposes.

4. The petition stands disposed of in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

February 19, 2015
Paritosh Kumar