

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

Civil Writ Petition No.15468 of 2013

Date of decision: 23.2.2015

Dal Bahadur

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Satbir Singh Katnoria, Advocate,
for the petitioner.

Mr.APS Mann, Addl. AG., Punjab.

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

RAJIV NARAIN RAINA, J.

The Presiding Officer, Labour Court, Union Territory, Chandigarh has awarded reinstatement to the petitioner vide impugned award dated 15th February, 2011 but has denied continuity of service and back wages. The benefits which have been denied, have been justified by the Labour Court on the ground of laches and delay in approaching the management by lodging a claim for reinstatement. The Labour Court has formed an opinion on the ground that the petitioner did not make any representation to the department for his reinstatement and took no steps for the redressal of his grievances before the demand notice dated 20th January, 2006 while his services were terminated on 24th October, 2003 which

termination has been affirmed by the Labour Court to be in violation of the mandatory provisions and protections afforded by Section 25-F of the Industrial Disputes Act, 1947 (in short, "the Act").

2. It may be noted that there are two periods of service as a Peon rendered by the petitioner in the office of the Department of Homeopathy, Punjab. The first is from 22nd June, 1995 to 6th August, 1998. The second ran from date of re-employment on 29th April, 1999 and continued till 24th October, 2003. There is no dispute with respect to these two periods.

3. The question which as contended by Mr. Katnoria appearing for the petitioner has serious consequences is that there are/were employees in the same department whose services were regularized in terms of the policy instructions dated 26th May, 2003 of the Punjab Government which were in existence at the time of the illegal termination of the petitioner on 24th October, 2003 who would have had the benefit of those instructions but for his illegal termination. These instructions are on the record of the Labour Court as Ex.M-1. The material issue before the Labour Court was essentially not the result of delay and laches in seeking remedies but one really of whether the petitioner should have been accorded parity of treatment with those whose services were regularized under instructions which were available while he was in service. If there were other employees whose services were regularized on the strength of the instructions dated 26th May, 2003 then in case the petitioner satisfied the conditions of the policy, then he would come to possess a very valuable asset of being declared a regular hand before 1st January, 2004 after which date the pension regime was drastically altered and recruits joining service of Punjab Government after 1st January, 2004 would not be entitled to pension but

would be governed by a new fiscal discipline in lieu of service pension. Therefore, the question of denial of continuity of service to the workman becomes a serious issue which should have been examined by the Labour Court.

4. The delay and laches in raising an industrial dispute on serving a demand notice may impact back wages alone for the period prior to the notice raising a demand for justice. But when relief can be moulded it may not be proper to deny back wages altogether which may be made to run only from the date of raising of demand notice, but on the other hand the concepts of continuity of service and back wages are different in content. It is the business of the Labour Court, as no other Court possesses, to mould relief under the special law of the Industrial Disputes Act to the facts of the case. It appears to this Court that this is where an error in appreciation of evidence has occurred in the impugned award. Since I find no reasons either way in the award to come to a definite opinion, it would subserve justice better that the matter should be remanded to the Labour Court on the question of relief.

5. There is another reason why I should interfere with the award. This is for the reasons contained in the written statement filed by the State itself before the Labour Court through the Assistant Director, Homeopathy, Punjab, Chandigarh on behalf of the respondents wherein in paragraph 2, it has been admitted that the Department wrote to the Government a letter No.3H.Pb.2003/7051 dated 24th October, 2003 seeking advice regarding the regularization of the services of the petitioner and to keep his case in abeyance till receipt of advice of Government, on account of which the services of the petitioner were not being extended. More important is the

avermment of the State in paragraph 3, the State admitting that the legal notice served by the petitioner's counsel was duly replied vide letter No.2702 dated 26th July, 2004 explaining the whole position of the case that till the receipt of advice of the Government regarding regularization, the Department is unable to take any action in this regard as the petitioner was seen as not fulfilling the conditions of regularization due to long service break by remaining intentionally absent from duty from 1st June, 1998 to 1st July, 1998 out of his service period from 6th August, 1998 to 28th April, 1999 and also when the petitioner was in police custody from 31st December, 2001 to 4th January, 2002 in connection with some criminal case.

6. The Labour Court does not seem to have paid due regard to the contents of the written statement which may have been made a difference in the final dispensation. If the extension was not granted to the petitioner for the reasons given in the written statement, then it was none of his fault. If the services were terminated by non-extension, that will also amount to “retrenchment” within the meaning of Section 2(oo) of the Act which uses specific words, “for any reason whatsoever”.

7. The rights of the petitioner cannot be put on the alter of regularization. It is understandable that regularization was not the issue referred for adjudication but it became the foundation and substratum of the termination. The written statement leaves much unsaid as to the ultimate fate of the petitioner's case re: regularization. In this sketchy disposal of the reference this Court is unable to proceed further to form a definitive opinion either way so far as the relief is concerned. However, the findings on the reinstatement issue are affirmed and nor has that part been assailed by the State.

8. For the foregoing reasons, this petition is partly allowed. The impugned award [P-7] published in the Gazette on 31st March, 2011 in reference No.251 of 2006 is set aside to the limited extent. The matter is remanded to the Labour Court to re-examine all facets of relief of continuity of service and back wages after coming to the conclusion that the termination was illegal. If it was illegal, it was also void ab initio.

Parties are directed to appear before the Labour Court on 17.3.2015 for re-determination on the question of continuity of service and back wages and the relief legally capable of being granted or denied to the petitioner.

(RAJIV NARAIN RAINA)
JUDGE

February 23, 2015
Paritosh Kumar