

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

Date of Decision: 14.09.2015

CWP No.13276 of 2014

District Food and Supplies Controller, Palwal ... Petitioner

Versus

Rajesh & anr. ... Respondents

CWP No.13294 of 2014

District Food and Supplies Controller, Palwal ... Petitioner

Versus

Ravinder & anr. ... Respondents

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

Present: Ms. Vibha Dhiman, AAG, Haryana.

Mr. JS Brar, Advocate,
for respondent No.1.

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.13276 and 13294 of 2014 as common questions of law and facts are involved in them which can conveniently decided by a common order.

Eight separate references were made by the appropriate government at the behest of the workmen to the Labour Court-III, Faridabad, to adjudicate the collective disputes arising between the employer and the employees which had created industrial unrest. Services of all eight workmen had been terminated on different dates for the same reason and the Union had espoused their cause by raising a demand for justice with the employer. In conciliation proceedings efforts to settle the

dispute failed and the failure report submitted by the conciliation officer under section 12 (3) of the Act led to the reference of the dispute.

In none of the cases were the provisions of Section 25F of the Industrial Disputes Act, 1947(for short 'the Act') complied with. Some of the workmen have secured Labour Court awards in their favour directing reinstatement with 20% back wages. So far as the present petition and the connected petition where Rajesh and Ravinder are the respondents, the State is before the Court in the Department of Food and Supplies challenging the award of even date dated 31.7.2013 urging that the breach of Section 25F of the Act would not lead automatically to reinstatement with payment of back wages. One of the eight workmen i.e. Harveer, whose services were retrenched in the year 2011, has also secured an award in his favour granting reinstatement to him by declaring his termination order dated 26.4.2011 as illegal on account of violation of Section 25F of the Act.

Ms. Dhiman points out that period of service is brief in the case of Rajesh which is no more than a period of 8 months though he had completed 240 days of uninterrupted service prior to the date of termination. The period of service in Harveer's case was 361 days of continuous and uninterrupted service. The District Food & Supplies Controller, Palwal (Haryana) had challenged the award dated 31.7.2013 in the case of Harveer before this Court through CWP No.12645 of 2014, which was dismissed by a Coordinate Bench on July 4, 2014 and the award of the Labour Court was upheld in granting reinstatement with continuity of service but the monetary benefits restricted to 20% of the arrears of back wages. Despite the order passed by this Court on

4.7.2014, the State Government was in no mood to implement the award which compelled the petitioner to approach this Court by filing COCP No.3209 of 2014 to initiate action for contempt against the implementing authority for not taking steps in compliance of the Court order. In contempt proceedings the status report by way of affidavit of the Director General, Food and Supplies, Haryana, was filed, according to which the petitioner was granted the dues as per the award passed by the Labour Court. The Court was assured that on reinstatement having been ordered and the workman joining his duties his salary would be paid regularly. Accordingly, the contempt petition was disposed of on July 13, 2015.

It is the contention of Mr. Brar appearing for the respondent-workman that in the case of Harveer and Rajesh they have had their separate awards implemented at the hands of the Department and both of them are placed in identical position with the present workman and there is hardly any distinguishing feature in the two sets of cases which call for similar treatment to prevent unfair discrimination in the matter of grant of similar relief.

It may be noted that the State Government was ex parte before the Labour Court and even its defence was struck off before they were proceeded ex parte vide order dated 1.2.2012. The application for setting aside the ex parte order dated 1.2.2012 filed before the Labour Court was dismissed for the reason that the Labour Court had become *functus officio*. Feeling aggrieved by the dismissal of the application by the Labour Court, the State filed a Civil Revision under Article 227 of the Constitution of India challenging both the orders i.e order proceeding ex parte and the order dismissing the application for recall of the order

craving for a decision on merits. However, the petition did not find favour with this Court which rejected it on 23.5.2013. These orders were passed in Harveer's case and six other associate workmen who had met with the same fate when their services were terminated for a common reason.

Ms. Dhiman submits that there is a distinguishing feature which is to the effect that the Labour Court after passing the award and having become *functus officio* made a complaint to the Deputy Commissioner of Police (General), Sector 12, Faridabad, regarding using forged and fabricated documents in Reference No.R/282/2011 titled as Harbeer [Harveer] vs. DFSC Palwal and Reference No.R/288/2011 titled as Rajesh vs. DFSC Palwal which required a criminal investigation.

Harveer is the person, whose case has been finalized by this Court and which cannot be reopened except in further proceedings in letters patent appeal and then before the Supreme Court. It is not the case that the orders passed by this Court in Harveer's case (*supra*) are under challenge in appeal. Rajesh is the respondent in CWP No.13276 of 2014.

It appears rather strange that once the Presiding Officer, Labour Court-III, Faridabad had signed the award which had become enforceable after he was rendered *functus officio* on 31.7.2013 with the pronouncement of the award and its subsequent publication, he should still approach the Deputy Commissioner of Police, Faridabad questioning his own quasi judicial work as the designated Labour Court-cum-Tribunal for a reason which might reopen it even when he had lost jurisdiction in the matter. I would, therefore, not accept the argument of Ms. Dhiman that this Court should be swayed by the complaint made by

the Presiding Officer, Labour Court-III, Faridabad, when the fate of the investigation is neither known nor disclosed to the Court by the State in this petition. That is not sufficient or proper reason to keep this matter pending to await the result of the complaint No.1467, dated 20.12.2013 lodged with the police department. Photocopy of the complaint produced at the time of hearing is taken on record as Mark 'A'. It is also well settled that new matters cannot be introduced or looked into for the first time in writ proceedings other than the material placed before the Labour Court and accepted on record as evidence and duly considered while passing the award.

So far as the legal issue of breach of mandatory provisions of Section 25F of the Act should result in reinstatement, the law has now been settled by a series of judgments of the Supreme Court in citations **Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, (2010) 5 Supreme Court Cases 497, **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192; **Devinder Singh vs. Municipal Council, Sanaur**, (2011) 6 SCC 584 and **Jasmer Singh vs. State of Haryana and another**, (2015) 4 SCC 458 and **Tapash Kumar Paul vs. BSNL & Ors.**, 2014 (3) SCT 106 (SC) reverting the legal position to the declaration of law in **Hindustan Tin Works Pvt. Ltd. vs. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 and **Surinder Kumar Verma v. CGIT**, AIR 1981 SC 422 cases.

I have no reason to intermeddle in the award of the Labour Court since it does not suffer from any fundamental flaw, perversity, irrationality or an error apparent on the face of the record.

Accordingly, both the petitions are not found justifying interference on merits and for the reasons recorded above are ordered to stand dismissed. No costs.

(RAJIV NARAIN RAINA)
JUDGE

14.09.2015
monika