

CWP No. 21838 of 2011

Date of decision: 3.11.2015

State of Haryana

.....Petitioner

versus

Jai Bhagwan and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Vibha Dhima, Advocate
for the petitioner.Mr. Neeraj Kumar, Advocate
for respondent No. 1.**RAJIV NARAIN RAINA, J.(ORAL)**

The interim order has been complied with by the petitioner and the respondent-workman has been reinstated to service since this Court did not stay the operation of the award which has resulted in reinstatement pending outcome of the present petition. Consequently, the respondent has been working since 2011 and drawing his wages.

Heard the respective learned counsel in their challenge to and defence of the impugned award dated 10.12.2010 passed by the Presiding Officer Labour Court, Rohtak holding that the termination of services of the respondent-workman were brought about illegally and the court *a quo* has granted to the workman reinstatement with continuity of service and 50% back wages from the date of the demand notice i.e 8.9.1998.

The finding has been returned that there has been violation of not only Section 25-F of the Industrial Disputes Act, 1947 (for brevity 'the Act) but also Section 25-G of the Act. While returning the finding on issue No. 1 which could not be assailed at the hearing, it is not disputed by the

petitioning Department of PWD, B&R, Haryana that their officials did not comply with the mandatory provisions of Section 25-F of the Act and persons were retained in service after the respondent-workman was shown the door and thus, Section 25-G was breached.

The petitioner was appointed in the year 1980 and he served till 1996 i.e. for 16 years. That is long and durable service by any standards to suddenly without sufficient cause to retrench and deprive a daily wages of his livelihood and violate his fundamental right preserved under Article 21 of the Constitution as has been explained recently in **Fisheries Department, State of Uttar Pradesh v. Charan Singh**, (2015) 8 SCC 150=2015(2) SCT 597. See also the rulings in **Raj Kumar Dixit vs Vijay Kumar Gauri Shankar Kanpur Nagar**, (2015) 9 SCC 345.

Witnesses are on record to depose that the original record was lost in floods and was not available in the trial. However, the labour court found documents on the record from where it was forthcoming that the workman had been appointed in December, 1986 and, therefore, there was nothing to disbelieve the workman had rendered service continuously. The non-production of record for the period February 1995 to March 1996 was crucial since that became the relevant period to calculate 240 days of continuity of service in the preceding 12 months from the date of termination, and in absence of evidence an adverse inference was drawn for non-production of that record and for this inference the labour court relied on the depositions of the management witnesses by applying the principles of admissions and inability to rebut the statement of the workman when neither the management witnesses rebutted the assertion that rule of 'last

come first go' was not followed at the time of termination.

For these reasons, I do not find any fundamental flaw of law or fact or an error apparent on the face of record to upset the judicial discretion exercised by the labour court in granting relief after appreciating the evidence on record. It is not for this Court to re-appreciate the evidence in the supervisory jurisdiction provided by Article 226 of the Constitution beyond the scope of power guided in the judgment rendered by the Supreme Court in **Satyanarayan Laxminarayan Hegde vs. Malikarjun Bhavanappa Tirumala** (1960) 1 SCR 890=AIR 1960 SC 137 and Constitution Bench authority in **Syed Yakub vs. K.S.Radhakrishnan**, AIR 1964 SC 477. The jurisdiction is not appellate and findings of fact, even if erroneous are not to be upset unless they result in manifest injustice and a colossal failure of justice.

For the reasons aforesaid, no ground is made out for interference in the impugned award. The petition is consequently, dismissed.

3RD NOVEMBER, 2015
Shivani Kaushik

[RAJIV NARAIN RAINA]
JUDGE