

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19500 of 2012

Date of Decision: 27.08.2015

Karambir

... Petitioner

Versus

The Presiding Officer, Industrial
Tribunal-cum-Labour Court, Hisar
and others

... Respondents

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

Present: Mr. S.K. Verma, Advocate,
for the petitioner.

Mr. J.S. Bedi, Addl. AG, Haryana.

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

RAJIV NARAIN RAINA, J.

It has been settled by the Supreme Court in **Maharashtra State Road Transport Corporation Ltd. vs. Casteribe Rajya P. Karmchari Sanghatana**, (2009) 8 SCC 556 that industrial law principles applicable to labour courts are not to be mixed with service jurisprudence to deny reinstatement with continuity of service with back wages in a case where there has been admitted non-compliance of section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”). Therefore, the decision of the Supreme Court in **Secretary, State of Karnataka vs. Uma Devi**, (2006) 4

SCC 1 is not applicable in cases of workman protected by the provisions of the Act as explained in **Casteribe** case.

Besides, the law has been amply enunciated and explained by the Supreme Court of the effect of bringing about cessation of services of workmen in violation of the mandatory provisions of sections 25-F, 25-G & 25-H of the Act in a spate of judgments heralded in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192, **Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, 2010 (3) SLR 663, **Devinder Singh vs. Municipal Council, Sanaur**, (2011) 6 SCC 584 and **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324, **Jasmer Singh v. State of Haryana**, (2015) 4 SCC 458 etc.

In view of the law laid down as noticed above, it would be difficult to uphold the impugned award dated April 06, 2012 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar where there is no semblance of any discussion in denying reinstatement or to award a meagre Rs.40,000/- as compensation for this court to judicially review reasoning of which there absence in the award.

The findings of the Labour Court are not supported by the evidence on record and mere recitation of case law, which are not applicable on facts and are distinguishable are insufficient to deny relief which might occasion a failure of justice. To the contrary, the impugned award works manifest injustice by limiting its consideration to the nature of entry to service and applying the principles of law laid down in **Uma Devi's** case which are binding in direct actions brought before the writ court under

Article 226 claiming regularization of services. The petitioning workman questioned the legality and validity of the retrenchment but did not claim regularization. The available and binding law in **Casteribe** was not noticed in the award, which if had been, would have altered the dispensation. Therefore, the award suffers from a fundamental flaw in law and perverse findings of facts and has not been passed in accordance with the spirit of labour laws which is a beneficial legislation enacted for the protection of workers so that they are not unfairly dealt with by their employers. The labour court has erred in abdicating its authority. The position obtaining after the Supreme Court decision in **Harjinder Singh** case is that the law declared by the Supreme Court in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 is the operating law in as much as where retrenchment has been occasioned by breach of the mandatory provisions of section 25-F of the Act which mandates prior notice of termination, handing over one month's wages in lieu of notice period accompanied by payment of retrenchment compensation then ordinarily reinstatement should follow with full back wages. The employer proving the case falls in an exception. What is reasonable arrears of back wages of course is a matter of judicial discretion exercised properly and reasons assigned to deny them wholly or partially by supporting reasons which can only be measured on a case to case basis. Even this exercise has been left blank in the award as to why only Rs. 40,000/- should represent adequate and reasonable compensation if reinstatement to service was worthy of denial even after recording a finding of fact that Section 25-F was breached in letter and spirit.

In the present case, the petitioner had been appointed as a Beldar-cum-Mali and served the Public Health, Division No. 1, Bhiwani from the day he was appointed on February 01, 1998. His services were abruptly brought to an end on January 01, 2002. It may be mentioned that violation of the provisions in Sections 25-G and 25-H of the Act was pleaded by the workman but no finding has been returned by the Labour Court in favour of the workman since he was unable to name persons who continued to serve or persons who were appointed as Beldar-cum-Mali after his services were dispensed with. On these two issues involving Sections 25-G and 25-H of the Act the impugned award is supportable in law and the findings on them are affirmed. That still leaves one with Section 25-F of the Act staring in the face and the binding rulings of the Supreme Court noticed above.

In the facts and circumstances of this case, this court is inclined to modify the award by tacit consent of the counsel holding that while ordering reinstatement to service it would serve the ends of justice to restrict the back wages by 50% as there is no positive evidence of gainful employment or otherwise during the period of forced idleness.

For the foregoing reasons, this petition is allowed and the impugned award dated April 06, 2012 is set aside. The petitioner is held entitled to reinstatement with continuity of service but with 50% back wages. The petitioner be reinstated to service after expiry of the period prescribed for appeal against this order. The arrears of back wages be computed accordingly and paid to the petitioner within three months from the date of receipt of certified copy of this order failing which it shall earn

simple interest @ 8% per annum, which is the rate of interest selected by the Labour Court in the award.

(RAJIV NARAIN RAINA)
JUDGE

27.08.2015
manju