

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

I.

Civil Writ Petition No.19937 of 2012 (O&M)

Date of decision: 3.9.2015

Chief Engineer and others

... Petitioners

Versus

Lalkar Singh and another

... Respondents

II.

Civil Writ Petition No.19935 of 2012 (O&M)

Chief Engineer and others

... Petitioners

Versus

Raj Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mrs.Puneet Kaur Sekhon, Addl. AG., Punjab,
for the petitioners.

Mr.Mukand Gupta, Advocate,
for the respondents.

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

RAJIV NARAIN RAINA, J.

This order will dispose of the aforesaid two petitions as
common questions of law and fact are involved in both the cases involving
the same department and workmen who are placed in similar circumstances.

The facts are taken from CWP No.19937 of 2012 for convenience and the parties would be referred by their status in this petition.

2. The State of Punjab through its Chief Engineer, Irrigation Department, Punjab has presented this petition under Article 226 & 227 of the Constitution of India praying for certiorari for setting aside the award dated 20th March, 2012 passed by the Presiding Officer, Industrial Tribunal, Bathinda awarding reinstatement and continuity of service to the respondent-workman but limiting the back wages to 30% of the arrears from the date of the award.

3. The operation of the impugned award was stayed subject to the provisions of Section 17-B of the Industrial Disputes Act, 1947 [in short, “the Act”] vide order of the learned Single Judge dated 6th October, 2012.

4. The brief facts are that the respondent-workman was engaged as a temporary Gauge Reader vide appointment letter No.3052 dated 12th June, 1995. He joined service on the same day. The initial period of service was for 89 days. His services were extended for another 89 days vide letter dated 11th September, 1995. Thereafter, he was appointed for yet another 60 days. Ultimately, his services were terminated with effect from 13th February, 1996. The burden to prove that the workman was employed continuously for more than 240 days in the preceding calendar year prior to the date of termination of service was discharged by him and the Labour Court agreed that industrial rights had come into existence when it was proved that the period of service was more than the requisite 240 days of continuous and uninterrupted service.

5. The Labour Court duly noticed the settled position that the management had put notional and intermittent breaks in service of one day

or more after the initial appointment for the fixed period was exhausted and if this was the case then such extensions were designed to circumvent the Act to avoid the beneficial provisions contained in Section 25-F of the Act from maturing with a view to prevent the workman from getting the accrued benefits of labour laws which action amounts to an unfair labour practice.

6. The Labour Court applied the law declared by this Court on the point of unfair labour practice resorted to by the management to deprive the workman of protections under the Act and relied on the rulings in **Gandharb Singh v. Presiding Officer, Labour Court, Jalandhar and others**; 2002 (1) RSJ 39 and the Division Bench decision in **Estate Officer, Haryana Urban Development Authority v. Presiding Officer and another**; 2001 (2) Labour & Services Judicial Reports 7. In the latter case, this Court found that the termination of the workman was effected at the point of completion of 232 days aimed at depriving the workman of the benefit of Section 25F of the Act and this act amounts to unfair labour practice under Schedule-V of the Act read with the entries of unfair labour practice and victimization. The labour court after calculating the days of service found that the respondent-workman had put in 238 days before the axe of termination fell on him. The court relied on the decision of the Division Bench of this Court in **Mukesh Kumar v. Presiding Officer, Industrial-cum-Labour Court-I, Faridabad and another**; 2001 (2) RSJ 302 and **Ferozepur Central Coop. Bank Limited v. Labour Court, Bathinda and another** 1986 LLN 204 [P&H] that when the management acts unfairly only to deprive a workman of completion of 240 days it amounts to unfair labour practice and when this happens then the principle of non-completion of 240 days of service will not come in the way of

granting relief. It was in these circumstances that the Labour Court held that there was a stark violation of the mandatory provisions of Section 25F of the Act. Applicability of Section 25F of the Act in such an anomalous situation becomes penumbral since at the boiling point ice was thrown in by management as rights to retrenchment compensation or notice pay became illusory. Hence, right deprivation would by fiction bring the case within section 25F if we go by the work of the labour court given that the workman at the time of termination and then the legal effect of non-compliance is indicated in the dicta laid down in **Hindustan Tin Works Pvt. Ltd v. Employees of Hindustan Tin Works**; AIR 1979 SC 75 and judgments of the Supreme Court in **Harjinder Singh v. Punjab State Warehousing Corporation**; (2010) 3 SCC 192, **Devinder Singh v. Municipal Council Sangrur**; (2011) 6 SCC 584, **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & Ors**; (2013) 10 SCC 324 and **Jasmer Singh v. State of Haryana and another**, (2015) 4 SCC 458. The ordinary rule is reinstatement for violation of the provisions of Section 25F of the Act and in this case, the unfair labour practice on the part of the management to deprive the workman of his rights two days short of maturity is by way of unfair labour practice and victimization is an exception to Section 25F, 25G and 25H of the Act where the principle of 240 days becomes inapplicable. This was the better line of reasoning to be adopted. But the court a quo preferred to come via 25F of the Act. In the result it makes no difference.

7. For these reasons, the Labour Court has answered the reference in favour of the workman and against the management and the relief has

followed as above stated.

8. It is not open to this Court in writ proceedings while judicially reviewing the award of the Labour Court to tinker with the relief granted for the reasons stated which are not vitiated by an error of law or error of fact. The award does not suffer from any perversity, irregularity or a fundamental flaw in the choice of reasoning adopted by the Labour Court which is also plausible and for the reasons recorded above no interference is called for.

9. This Court would refrain from interfering in the award only to take a different view which is not the scope of proceedings under Article 226 & 227 of the Constitution of India. The areas of interference are indicated by the Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477 and none of the tests laid down therein is satisfied in this case warranting intercession in the dispensation and discretion judicially exercised which appears just and fair in the facts and circumstances.

10. Mrs. Puneet Kaur Sekhon, learned Additional Advocate General, Punjab appearing for the State has prayed for modification of the award in case it is allowed to stand. She submits that it cannot be ignored that the impugned termination order was passed on 13th February, 1996 and the workman raised the dispute for the first time by serving a demand notice on the management on 12th September, 2001 which comes to about 5½ years of wandering. It is well accepted principle in Labour jurisprudence that back wages should not be awarded prior to demand notice since an industrial dispute can be said to arise only when a demand is made for justice. The burden of the costs of non-disputed period should not be borne by the employer State for no fault of it. This aspect appears to have escaped notice of the Labour Court, Bathinda and I accept the request of

Mrs.Sekhon as genuine and valid that the back wages in this case do not deserve to be granted from 13th February, 1996 till 12th September, 2001 which period shall stand blacked out for the purpose of monetary benefits. To this extent, the Labour Court award suffers from an error and is consequently modified to bring it in consonance with law. 30% back wages awarded by the Labour Court would be computed with effect from 13th September, 2001 and become due and payable to the respondent-workman.

11. The position in accompanying petition CWP No.19935 of 2012 is also similar and it may be noted that in the aforesaid writ petition, the termination order was passed on 13th February, 1996 and the demand notice was issued on 12th September, 2001. On facts, there is hardly any difference between the two cases. They would, therefore, suffer the same order.

12. There is another case which has been brought to the notice of this Court which is in industrial reference No. 7 of 2001 decided by the Presiding Officer, Labour Court, Bathinda on 12th July, 2004 in which also the period of service was curtailed on 236 days. The workman therein was reinstated with continuity of service with 40% back wages from the date of demand notice i.e. 24th January, 2000. In CWP No. 18718 of 2004, the Division Bench upheld the reasoning in paragraph 11 of the award and dismissed the petition on 28th March, 2005 against which the State filed SLP (Civil) CC 278 of 2006 in case titled *Chief Engineer, Canals, Punjab and others v. Jawala Singh* which was dismissed on 20th January, 2006 by the Supreme Court after condoning the delay in filing the petition. Photocopies of the award, the decision of the Division Bench of this Court and the orders passed in the SLP are taken on record as Mark A, B and C. The petitioner is entitled to similar treatment to prevent unfair discrimination. In the case of

violation of Article 14 in its discriminatory part the High Court is bound to exercise jurisdiction of primary review and remove unfair discrimination as explained in **Om Kumar v. Union of India**, (2001) 2 SCC 386: AIR 2000 SC 3689.

13. For these reasons, both the petitions are partly allowed with the above modifications.

(RAJIV NARAIN RAINA)
JUDGE

September 3, 2015
Paritosh Kumar