

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

**CWP No.22575 of 2011
Date of Decision: 2.9.2015**

State of Punjab & anr.	Versus	... Petitioners
Tarawati & anr.		... Respondents

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

Present: Mr. Harkesh Manuja, Addl.A.G., Punjab.

Ms. Manjit Kaur Sandhu, 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)

Heard counsel at some length twice over.

2. Having regard to the impugned award and the findings of fact recorded therein, this court is of opinion that they are not liable to be upset or interfered with in writ jurisdiction under Article 226/227 of the Constitution of India since the findings do not suffer from irrationality, perversity or a fundamental flaw of reasoning. The worker has succeeded in the court *a quo*. While exercising discretionary and extraordinary jurisdiction this Court remains informed on the narrow scope of its authority by the principles of interference in awards of Tribunals indicated by the Constitution Bench of the Supreme Court in **Syed Yakoob v. K. S. Radhakrishnan**, AIR 1964 SC 477, which is the lighthouse guiding the subject matter. My reasons are as follows:

3. In this petition the State of Punjab has approached this Court against the award passed by the Presiding Officer, Labour Court, U.T.,

Chandigarh made on 14th January, 2011. In the impugned award, the worker has been held entitled to reinstatement with continuity of service and back wages @ 30% which all have been awarded in favour of the respondent.

4. The facts in brief are that the services of the worker-Tarawati wife of Ved Ram were hired as a Sweeper on 23rd November, 1993 to work on daily wage basis at DC rates. Thereafter, her services were extended on 89 days basis. She was issued successive appointment letters on 4th February, 1994, 13th May, 1994, 4th August, 1994 and 25th October, 1994 and she worked up to August, 1995. She was asked to leave the job in September, 1995 without notice, notice pay or paying her retrenchment compensation and thereby the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 were breached. While she was in service, Government of Punjab promulgated a scheme of regularization vide circular letter dated 18th January, 1995 granting benefit to those *ad hoc* and temporary employees who had been appointed to Class-III and IV posts and who had completed a minimum 240 days as on 31st December, 1994. Notional breaks not exceeding 30 days were to be ignored in terms of the policy. The candidates were required to fulfill the eligibility conditions of possessing prescribed qualifications, experience and age. Respondent No.1 claimed that her case fell in the policy and the termination of her services was an illegal act which has deprived her of a regular position in Class IV services.

5. Feeling aggrieved, she raised a dispute by serving a demand notice on the management on 1st November, 1999 under Section 2A of the

Industrial Disputes Act, 1947 (the 'Act'). The conciliation proceedings failed to settle the dispute, upon which, the appropriate government made a reference under Section 10(1)(c) of the Act to the Labour Court at Chandigarh. She was employed to work in the office of the Director, Health Services & Family Welfare, Punjab, Chandigarh.

6. In the trial before the Labour Court, the management pleaded that she was not appointed in November, 1993 but on 4th February, 1994. They did not dispute letters of extension of service. The management counted the actual days worked on 89 days basis and thought that when so calculated the number of working days in the preceding 12 calendar months from the date of retrenchment worked out to less than 240 days. The Labour Court did not agree with the calculation and held on evidence that respondent No.1 had actually served for more than 240 days in the 12 months preceding retrenchment on 31st August, 1995. The worker produced salary slips between September, 1994 to August, 1995 to prove her case under Section 25-B of the Act. The management, however, disputed the work for the month of September, 1994 but admitted the same for the months of October and November, 1994. It came in evidence vide Ex.W3 that the management applied a notional break on 29th July, 1994 and consequently, respondent No.1 had worked in August and October, 1994 since the period was included in the appointment letter dated 4th August, 1994 which was on file marked as Ex.W3. The reason for denying work done in September, 1994 was told off as not admitted on account of loss of office record for the period. When the days were added by the Labour Court, it found as per record that the worker had

completed 240 days in the preceding calendar 12 months from the date of termination of her services. Thus, the jurisdictional fact of completion of 240 days was proven.

7. There is a dispute as to the identity of respondent No.1- Tarawati wife of Ved Ram and another Tarawati working in the same office who was wife of Satpal. This was the mix up. It is the case of respondent No.1 that while she was appointed to work as sweeper on full time basis, Tarawati wife of Satpal was a part time employee working for 4 hours a day in the same office. There are two offices of the Director, Health Services in Chandigarh; one in Sector 24 while the other in Sector 34. Respondent No.1 worked in Sector 34 office while Tarawati wife of Satpal worked in the Sector 24 office. The witness of the management MW1 in his deposition made a statement that he did not know if the other Tarawati was working in Sector 24 office and the management assumed that Tarawati wife of Satpal was working in Sector 24 but there was no evidence to support the stand either on oral or documentary evidence adduced on record.

8. The case can be reduced to a simple fact that Tarawati wife of Satpal was regularized in terms of the policy formulated by the Government in terms of the Supreme Court decision in **State of Haryana v. Piara Singh**, (1992) 4 SCC 118 which was the leading case on point of regularization in the early 90s which later was declared a bad law in **Secretary, State of Karnataka and others v. Umadevi**, (2006) 4 SCC 1 but which decision has no bearing on the pre-existing rights flowing from regularization of services of Tarawati wife of Satpal while respondent No.

2 was deprived of such rights by reason of retrenchment. This confusion was cleared by the Labour Court and both the cases were found to be independent of each other. The Labour Court, however, limited its examination to the case of respondent No.1 based on breach of Section 25-F of the Act but the larger view was not propounded in the Labour Court that had the services of respondent No.1 not been illegally terminated, she would have had a preferential right to regularization of her services on the date when Tarawati wife of Satpal was regularized since she was a full time employee while the other Tarawati served part time during the same period but in different offices in the same department in the same city.

9. The Labour Court has held the termination of the services of respondent No.1 as illegal for violation of Section 25-F of the Act and, therefore, she would be entitled to reinstatement with continuity of service. However, she was held entitled to 30% of the back wages without assigning any special reason to scale down the monetary relief. The workman has not approached this Court assailing this part of the award and appears satisfied with arrears @ 30% of the back wages.

10. The facts which compelled by the Labour Court to grant 30% of the back wages though not expressed in the award I think are unexceptionable and I would only refer to one debilitating factor and that is that while the services of the worker were terminated in September, 1995 she raised a dispute by serving a demand notice for the first time on 1st November, 1999 and for the delayed period the costs cannot be borne by the petitioning State. The appropriate government also delayed making

reference by a sufficiently long time when it remitted the dispute for adjudication to the Labour Court vide order dated 2nd May, 2002 which was numbered as Reference No.178 of 2002.

11. The jurisdictional facts entitling the worker to relief are found in favour of respondent No.1 by the Labour Court and consequently, the award of granting reinstatement etc. is not open to be disturbed in writ proceedings. Reinstatement following breach of provisions of Section 25-F of the Act are by now well accepted principles in labour law jurisprudence in numerous judgments of the Supreme Court a few of which are dicta laid down in lead case **Harjinder Singh v. Punjab State Warehousing Corporation**; (2010) 3 SCC 192 followed by decisions rendered in **Anoop Sharma v. Executive Engineer Public Health Division No.1, Panipat (Haryana)**, (2010) 3 SCC 497 **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** in Civil Appeal No.3456 of 2015 arising out of SLP No.1532 of 2014 decided on 13th January, 2015.

12. In **Surwase** case supra, the view of the Supreme Court in **Hindustan Tin Works Pvt. Ltd v. Employees of Hindustan Tin Works**; AIR 1979 SC 75 has been re-affirmed as the operating law that illegal termination would normally result in reinstatement. Though reinstatement does not follow automatically but departure from the normal rule is in the purview of the management to prove. The management has not established by evidence a defence that there are

sustainable reasons and grounds present on the record necessitating departure from the ordinary rule. In any case, the State has benefitted by deprivation of back wages to the extent of 70% if the award is sustained.

13. On having given my thoughtful consideration to the matter, this Court is of the view that respondent No 2 has been wronged by a crisis of identity and breach of law. The award is not liable to be upset for any reason as it does not suffer from a fundamental flaw or an error apparent on the face of the record which might tend to vitiate the award.

14. I have no reason to differ with the view of the Labour Court properly formed and superimpose it by another possible view which is not part of the function of the writ court in the remedy provided in Article 226 of the Constitution as this Court does not sit in appeal against awards of Tribunals. After all, the labour court is the last court of fact and law and when its jurisdiction and discretion has been exercised judicially and judiciously intercession is not warranted.

15. For the reasons recorded and by applying the binding precedents noticed above I would dismiss this petition as being without merit.

(RAJIV NARAIN RAINA)
JUDGE

September 2, 2015

Paritosh Kumar