

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

Civil Writ Petition No.23977 of 2011

Date of decision: 4.9.2015

Manoj Kumar

... Petitioner

Versus

The Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Deepak Sonak, Advocate,
for the petitioner.
Mr.J.S.Bedi, Additional Advocate General, Haryana.

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

RAJIV NARAIN RAINA, J.

The petitioner was appointed as Water Pump Operator and served the respondent department of the Government of Haryana from 6th November, 2003 to 23rd January, 2006. The last drawn salary was ₹ 2250/. The services of the workman was brought to an end by the office of the Executive Engineer, Public Health Department, Bhiwani without paying regard to the provisions of Section 25-F of the Industrial Disputes Act, 1947 [in short, “the Act”]. When the petitioner was retrenched, the mandatory provisions of Section 25-F was breached inasmuch as neither retrenchment compensation nor notice pay were paid to the workman. The Labour Court has returned a finding of fact that jurisdictional facts have been proved on record justifying continuous service of 240 days within the meaning of Section 25-B read with Section 25-F of the Act. The termination was covered by the provisions of Section 2 (oo) of the Act. Therefore, the

Labour Court committed no error in awarding reinstatement. It may be noticed that the management did not produce record to substantiate its case for denial of relief as has been noticed by the Labour Court in the impugned award. The workman filed an application for production of record which was allowed by the Labour Court vide order dated 26th March, 2010 but again the record was not produced by the management and drawing adverse inference, the Labour Court correctly relied on the decision of the learned Single Bench in CWP No.1927 of 2009 decided on 14th February, 2011 in **Divisional Forest Officer, Forest Division, Bhiwani and another v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another**. Non production of the log book and attendance register etc. did not save any inability on the part of the management as contemplated under Section 65 of the Indian Evidence Act and an adverse inference drawn by the Labour Court under the circumstances was perfectly justified. I would affirm the finding of the Labour Court arrived at the jurisdictional fact which entitle the workman to industrial relief.

2. Learned counsel for the petitioner submits that the Labour Court while upholding the rights of the petitioner yet refused to award relief of reinstatement and awarded compensation in lieu of reinstatement quantified at a meagre sum of ₹ 25,000/- with interest @ 8% per annum from the date of filing of demand notice till realization. He submits that the award was passed by the Presiding Officer, Labour Court, Hisar on 25th April, 2011 when the turning point feature had been handed down by the Supreme Court in **Harjinder Singh v. Punjab State Warehousing Corporation** on 5th January, 2010 [(2010) 3 SCC 192]. In **Harjinder Singh's** case supra, the Supreme Court noticed its earlier dicta including

Jaipur Development Authority v. Ram Sahai; (2006) 11 SCC 684 which *inter alia* has been relied upon by the Labour Court. Still further, the decision of the Supreme Court in **Anoop Sharma v. Executive Engineer Public Health Division No.1, Panipat (Haryana),** (2010) 3 SCC 497 was also available to the Labour Court but it did not notice in which the Supreme Court dealt with its numerous past dicta including in **Ghaziabad Development Authority & another v. Ashok Kumar and another;** (2008) 4 SCC 261 and **Mehboob Deepak v. Nagar Panchayat, Gajrula and another;** (2008) 1 SCC 575 and the recent dicta in **Harjinder Singh's** case supra explaining the correct legal position by distinguishing those cases. As a result, distinguished case relied upon by the Labour Court are in complete answer and a view is not possible to be taken in the light of the rulings which are available to the Labour Court on the date of judgment which have further been explained and followed at least upto **Jasmer Singh v. State of Haryana and another** (2015) 4 SCC 458 . Since the recently formulated view of the Supreme Court available to the Labour Court has not been taken into consideration, the award suffers from a fundamental error of law which vitiates the award and for the aforesaid reasons, is not sustainable. Consequently, interference is called for in the award to avoid monumental miscarriage of justice.

3. The view in **Devinder Singh v. Municipal Council Sangrur;** (2011) 6 SCC 584 may have been too close to come to the knowledge of any Court when a case was decided a fortnight later but atleast the view in **Harjinder Singh's** case supra was published and the Labour Court ought to have acquainted itself with the recent trends in the precedents of the Supreme Court.

4. It may be noted that at the outset, the petitioner made a statement before the Court that if he is reinstated, he would forego back wages. In that view of the matter, the writ petition is partially allowed by modifying the award of the Labour Court. The petitioner would be entitled to reinstatement but back wages he has foregone. In these circumstances, I have no reason to upset the award of ₹ 25,000/- as was handed down to the workman by the Labour Court. To that extent, the Labour Court award is sustained with respect to monetary relief but that will not be read as compensation. The amount will be treated as costs of litigation.

5. Before paring, I wish to say a few words on Labour Courts awarding lump sum compensation in lieu of reinstatement and making interest run from the date of filing of the demand notice till realization. This is not the proper exercise of jurisdiction. When the Labour Court awards adequate and reasonable compensation in lieu of reinstatement, then interest should not be awarded except to run from the date of the award since the award of interest would be antithetical to lump sum compensation and interest component, if applied what is in the mind of the Labour Court, then it should be added in the lump sum amount. I have seen similar orders coming before me in the roster where the Labour Court have awarded interest on compensation. The Labour Courts are advised in cases where compensation in lieu of reinstatement is chosen as relief, then interest, if any, to run from the date of award till realization but not from the date of demand notice. Let this order be brought to the notice of the Labour Courts within the jurisdiction of this Court for them to remain guided on the point of interest.

(RAJIV NARAIN RAINA)
JUDGE

September 4, 2015

Paritosh Kumar