

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15475 of 2015

Date of Decision: 24.08.2015

Delhi Public School, Gurgaon

... Petitioner

Versus

The Presiding Officer, Industrial
Tribunal-cum-Labour Court-I,
Gurgaon and another

... Respondents

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

Present: Mr. Sachin Mittal, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

1. The period of service rendered by the workman in the petitioner-School is about 8 years. An FIR was lodged against the workman and a co-accused in the Police Station, Gurgaon alleging embezzlement of school funds where the workman served as a Store Assistant.

2. Mr. Mittal appearing for the management is not in a position to apprise the court as to the fate of the criminal case but admits that no departmental inquiry was held against the workman which was always open to the management to resort to in addition to registering a criminal case. The charge being of a criminal nature stigma would attach to termination in the face of the pending criminal case involving defalcation of money. Therefore, the termination order is not lawful since it suffers from the twin vice of motive and foundation and the Labour Court is correct in setting

aside the termination for want of holding a regular departmental inquiry into the charges to establish guilt of the workman. Nor were the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 (The Act) complied with when neither notice, neither one month's wages in lieu of notice was issued or paid nor retrenchment compensation was handed over at the time of termination.

3. The defence version that the workman remained absent from duty and in unauthorized leave has not been believed by the Labour Court as there is no probative evidence on record to support such a defence. When the defence of the management has failed it cannot be said that the jurisdiction exercised by the Labour Court-I, Gurgaon in passing the impugned award dated March 09, 2015 either suffers from perversity, irrationality or unreasonableness. The Labour Court has returned findings of fact after appreciating the evidence on record and has noticed the judgment of the Supreme Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324 that for violation of the provisions of section 25-F of the Act ordinarily reinstatement with full back wages follows. There are neither pleaded nor proved any reasons necessitating departure. The Labour Court has exercised its discretion properly and in its wisdom has thought it fit to award reduced back wages to 40% w.e.f. November 09, 2010 onwards which is a fair and just dispensation which takes care of the provisions of section 11-A of the Act to impose a cut, though it has not said as much or directly applied its underlying principles, given the present is a no-enquiry case.

4. No interference is called for in this writ which is ordered to

stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

24.08.2015
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