

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

**CWP No.18853 of 2013 (O&M)
Date of decision: 07.04.2015**

Garu Ram

... Petitioner

Vs.

OTIS Elevator Company (India) Ltd. & others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Pritam Saini, Advocate
for the petitioner.

Mr. D.P.Sharma, Advocate
for respondents No.1 and 2.

AMIT RAWAL J.

Workman has approached this Court challenging the Award dated 18.02.2013, whereby, the Labour Court instead of ordering reinstatement, ordered for payment of compensation of ₹ 3,00,000/- to be paid within a period of three months from the date of Award.

Brief facts of the case are that the petitioner was appointed as Mechanic on 01.02.1980 and his services were regularized on 01.02.1989 after successful completion of his training and interview. On 15.03.2010, he was suspended by the Management and thereafter, was served with a charge sheet on the

ground that while working on duty, he along with one Des Raj, his companion, violated the Elevator Cardinal Rule No.3 and thus, committed an error. As per the allegations in the charge sheet, Des Raj was allegedly working and cleaning the rope area with full care and caution and after the completion of his work, Des Raj told the workman-petitioner to start the machine but in this process, Des Raj took his hand near the rope resulting into minor injury on his index finger.

The detailed reply to the charge sheet was filed by raising plea that workman was not afforded any opportunity to defray method of enquiry and was not in consonance with principles of natural justice. The Management vide letter dated 12.04.2010 directed the workman to submit reply in 24 hours. The said letter was also in the language of English which could not be comprehended by the workman and thereafter, his services were terminated. He also submitted that the workman had un-blemished record of service of a period of 30 years. The workman on raising the demand and the matter was referred to the Labour Court.

The Management in the reply took the aid of the Elevator Cardinal Rules. For the sake of brevity, the aforementioned rules is extracted herein below:-

“NEVER work or position body parts in proximity to unguarded moving parts or electrical circuits” (page 36 of inquiry file).”

The Management further submitted that the workman had suffered a confessional statement dated 31.03.2010, copy of which has been annexed as Annexure P-4.

During the pendency of the writ petition, this Court on 05.02.2014, passed the following order :-

“It is a matter of record that the petitioner-workman was working since 1.2.1980 and was regularised on 1.2.1989. His services were terminated on 20.4.2010 after a period of 30 years of service on account of not following the safety procedure mandated by the company. The Labour Court has awarded a sum of Rs.3 lacs as compensation but not directed reinstatement.

Counsel appearing on behalf of respondents No.1 and 2 prays for some time to find out whether the order of termination can be modified into an order of voluntarily retirement so that the workman can be paid all his retiral dues apart from a sum of Rs.3 lacs which had been awarded by the Labour Court.

An affidavit to this effect be filed with an advance copy to counsel opposite before the next date.

Adjourned to 7.3.2014.”

In pursuant to the said order, Management has filed an affidavit dated 05.03.2014, whereby, showed willingness to treat the order of termination dated 20.04.2010 as order of voluntary

retirement and further mentioned that the petitioner would be entitled to a sum of ₹19,32,375/- and for the purpose of obtaining gratuity amount on account of provident fund, the petitioner is required to apply with complete necessary formalities.

Learned counsel for the petitioner after obtaining the instructions from his clients submitted that his client has sufficient period of service to superannuate and therefore, offer aforesaid was not acceptable.

I have heard learned counsel for the parties and appraised the paper book.

The Labour Court in paragraph numbers 13 to 15 of the Award held that no confession, qua not adhering to safety rules, was made and the manner in which accident had taken place was that Des Raj received only a minor injury in his index finger and thumb of the right hand and on the basis of the aforementioned fact, and letter dated 31.3.2010, Annexure P-4, enquiry officer held that the workman admitted his guilt and thus, held him liable for the dismissal.

The Labour Court also deliberated on the issue that it would be futile to remand the matter back to the enquiry officer to defray enquiry as according to his confession, Des Raj has suffered minor injury. The Labour Court has not ruled the regular appointment of the workman, but instead of ordering his reinstatement, the Labour Court has only awarded compensation of ₹3,00,000/-. However, the alleged violation of Elevator Cardinal Rules do not provide that in

case of violation of such rules, it would entail dismissal of service. It is now settled that once the Court has come to a conclusion that order of dismissal is illegal, the workman is entitled for relief of reinstatement with continuity of service and full back wages.

I draw my support from the judgment of Division Bench of this Court in **Karambir vs. Haryana Urban Development Authority and another** 2011(2) SCT 557 and judgment of Hon'ble the Supreme Court in **Srikantha S.M. vs. Bharath Earth Movers Ltd.** 2005 (8) Supreme Court Cases 314. In fact, it was the co-worker who sustained injuries, thus disciplinary proceedings against the petitioner right from inception was illegal, fatal and amounted to unfair labour practice promulgation of VRS scheme should not come in way in granting relief particularly, where it has been found that services have been terminated in a wrongful manner.

It is a matter of record that at the time of dismissal of service, petitioner was drawing monthly salary of ₹ 29,370/- and as per the averments, petitioner has service of 13 years to superannuate, therefore, in my view, awarding compensation of ₹3,00,000/- would not be adequate. The dispute with regard to the termination between the workman and Management has been pondered upon by Hon'ble the Supreme Court in **Jasmer Singh vs. State of Haryana and another** in Civil Appeal No.346 of 2015 decided on 13.01.2015, and while culling out the ratio descendi, on the basis of the judgment rendered in **Deepali Gundu Surwase vs.**

Kranti Junior Adhyapak Mahavidyalaya 2013 (10) SCC 324 held that the miseries suffered by a person, who has been dismissed or removed or otherwise terminated from service cannot easily be measured in terms of money. Suffering of the family has to be looked from all corners viz-a-viz deprivation of nutritious food and all opportunities of education and advancement in life. Therefore, the reinstatement of such employee where the competent authority holds that action taken by the employer was ultra vires of statutory provisions, much less, all principles of natural justice, entitles the employee to claim full back wages and in case, the employer wants to deny full back wages, onus is on the employer to prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. In essence, Hon'ble the Supreme Court held that the back wages should not be denied to the employee who has suffered due to an illegal act of the employer as it would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. Onus is always upon the Management to prove the claim of the back wages and the workman was gainfully employed. In the instant case, a categorical stand was taken that the workman was not gainfully employed during the period, he remained out of service.

I deem it appropriate, that the workman is entitled for reinstatement with continuity of service and also entitled to full back

wages as there was no fault on the part of the workman. Even the alleged incident should not entail into harsher punishment of dismissal.

In view of what has been observed above, order of the Labour Court is wholly un-sustainable, perverse and arbitrary and is hereby set aside.

It is ordered that petitioner is entitled to reinstatement into service with continuity of service and shall also be entitled to full back wages.

Accordingly, the writ petition is allowed.

(AMIT RAWAL)
JUDGE

April 07, 2015
savita