

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.18407 of 2015 (O&M)
Date of Decision: 02.09.2015**

M/s Himalyan Plastics Ltd.

... Petitioner

Versus

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

... Respondents

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

Present: Mr. Ashish Chaudhary, 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.

The best evidence to prove that the respondent-2 – workman did not work for the period June 21, 2004 to July 03, 2004 would have been an attendance register marking the workman absent from duty. To support its case of abandonment of service, the management produced Ex.M-4 which was stated to be an attendance register but the Labour Court found that the document was a loose sheet of paper which was not authenticated by an officer of the Labour Department or the ESI Corporation to certify its correctness as required by rules. Neither did it bare the signatures or initials of the workman nor were obtained thereon by the management. The learned Presiding Officer, Labour Court-II, Gurgaon in the impugned award dated May 06, 2015 has discarded the attendance register as evidence which carries no legal weight. Mere testimony of MW-1 M.C. Sharma appearing

for the management is not sufficient evidence to rebut the record. Thus a valid inference could not be drawn from the record that a case of abandonment was not made out. It may be noted that the demand notice was served by the workman on October 08, 2004 claiming reinstatement with full back wages on illegal termination. It is inherent in order to sustain a plea of abandonment to prove that the management was not put in a position to comply with the provisions of section 25-F of the Industrial Disputes Act, 1947 ("the Act") by default of workman not turning up for duty since the two pleas are inconsistent with each other. When plea of abandonment fails to pass the test of evidence then the case rests on compliance or breach of procedure of effecting a valid retrenchment by employer doing acts and things required of the mandatory provisions of section 25-F of the Act inasmuch as in the present case no notice was served on the respondent nor was he paid one month's wages in lieu of notice nor any retrenchment compensation was paid which are the pre-conditions of a legal and valid cessation of service by termination or retrenchment. Section 25-F is designed to stall abuse by employers of the right to appoint and dismiss or to end, conclude, cease employment. It has a very significant role to play in labour jurisprudence and court should not undermine its parliamentary control in protection of the rights of the weak proletariat and the working class toiling in factories and industrial establishments to secure a meagre livelihood and the right to life with dignity.

Learned counsel argues that the respondent was not confirmed in service of the management and, therefore, the award should not hold as the workman was not a regular employee. I am afraid confirmation has

nothing to do with labour laws in the Act and is only a service law principle evolved by rules and regulations of the State and its agencies or by private managements in certified standing orders applicable to them as the terms and conditions of service. The provision imposes a restriction on employer's right to retrench a workman. A penny saved on retrenchment compensation today can present a huge bill on the employer's bank account tomorrow.

The learned Labour Court has done well to rely on the new industrial climate brought about by several cases decided by the Supreme Court at least one of which has been noticed in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324. The Labour Court has also come off well to rely on the ruling in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 and apply it which is the operating law whose vigour has been resuscitated by putting the clock back to tick all over again with fresh life in **Surwase** and the view expressed in **J.K.Synthetics Ltd v. K.P.Aggarwal**, (2007) 1 SCC (L & S) 651 declared not a good law. In **Surwase** case the Supreme Court observed in para. 38.6:-

“38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most

*of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in **Hindustan Tin Works (P) Ltd. v. Employees**” (supra).*

In **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192 the Supreme Court had started to revive the vigour of **Hindustan Tin Works** case. (Supra). As far as section 25-F of the Act is concerned the Labour Court is the Final Court of fact and it is not the business of this court in proceeding under Article 226 of the Constitution to interfere with findings of fact. This judicial movement has come to full bloom in **Surwase** case.

In the matter of grant of relief it does well to recall the authority in **Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court**, (1980) 4 SCC 443 the Supreme Court soon after the pronouncement in **Hindustan Tin Works** observing in para. 6)

*“6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, **there is a vestige of discretion left in the court to make appropriate consequential orders**. The court*

may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.” (emphasis added)

It is lastly contended by the learned counsel that the petitioner-Company was always willing to take the workman back but the workman has shown no interest to the offer. I have no material to formulate a view on this since it is not brought to my notice as to what was the stand of the management before the Conciliation Officer when the conciliation proceedings were held to settle the disputes between the parties and was such a firm offer made or the olive branch extended to the workman and yet he refused employment. In any case, if the petitioner-Company is still willing to take the workman back in service as they profess then such an opportunity has presented itself for them to honour as the award is liable to be upheld as it does not suffer from any fundamental flaw or error apparent on the face of the record.

For the reasons recorded above, I find no reason to interfere with the award which grants reinstatement with continuity of service and full back wages from the date of termination i.e. October 04, 2004 with valid justification. A direction is issued to the petitioner to implement the

award in toto within 2 months of the date of receipt of a certified copy of this order and to submit a compliance report for the perusal of this Court within a month thereafter.

Accordingly, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

02.09.2015
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