

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19838 of 2015

Date of Decision: 18.09.2015

The Civil Surgeon, Ch. Bansi Lal
Civil Hospital, Bhiwani

... Petitioner

Versus

Smt. Nirmla and another

... Respondents

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

Present: Mr. J.S. Bedi, Addl. AG, 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 Civil Surgeon, Bhiwani has filed this petition under Articles 226 & 227 of the Constitution of India praying for setting aside of the award dated August 11, 2014 passed by the Presiding Officer, Labour Court, Hisar whereby the services of the respondent-workman have been held to be illegal for non-compliance of section 25-F of the Industrial Disputes Act, 1947 ("the Act") after she had put in one and half years of service as a Sweeper in the Government Hospital. While awarding reinstatement, the Labour Court has exercised its discretion in denying back wages to the work person. However, continuity of service has been granted.

It is the contention of Mr. Bedi appearing for the State that the

service period is too brief to reward the respondent-workman with reinstatement in a Government establishment against a post in Civil Hospital. He submits on the strength of the catena of decisions reflected in **Assistant Engineer, Rajasthan Dev. Corp. & Anr vs. Gitam Singh, 2013** 2013 (2) SCT 30 (SC) that reinstatement is not the order of the day and such relief should not follow automatically whereas several factors would have to be considered by the Labour Court while choosing relief. While it is true that reinstatement would not follow automatically or mechanically but there is a rule of departure and that is for the employer/management to show that there are reasons why relief should be denied wholly or partially upon pleading and proof while there is none noticeable on the record of this case.

In the present case, the Labour Court has exercised discretion judicially and judiciously and when there has been due application of mind then it is not for the Writ Court either under Article 226 or 227 of the Constitution of India to disturb the discretion exercised by the Labour Court on findings of fact or to tilt the case one way or the other by substitution of opinion of this Court only because it seems a better thing to do or may be more appropriate in the facts and circumstances of the case however brief the period of service may be. The jurisdiction exercised by this Court against awards of Tribunals stays within the confines of **Syed Yakoob v. K.S. Radhakrishnan**; AIR 1964 SC 477 and the parameters laid down in **Surya Dev Rai v. Ram Chander Rai** reported in 2003 (6) SCC 675 Very recently the Supreme Court in **Jasmer Singh v. State of Haryana**, (2015) 4 SCC 458 and **Tapash Kumar Paul vs. BSNL and another**, 2014 (3) SCT 106 has dissuaded High Courts in interfering with awards where

discretion has been exercised judiciously and there are no fundamental flaws noticeable or any error apparent on the face of record. This is the line of reasoning generated by the Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324 which makes for a fresh line of thinking in the mind of this Court which is bound to give effect to and act in aid of the Supreme Court under Article 144 of the Constitution.

In the above analyses, I find no cogent or valid ground to interfere with the impugned award which appears ex facie just and equitable or to accept the specious contention of Mr. J.S Bedi that the short lived tenure for no fault of the workman cut short by illegal termination should deprive him of relief granted by the court *a quo* only for the reason that the concept of automatic reinstatement is the governing principle for denial of reinstatement. This is not true on a critical analysis of the case law. If there is divergence in past dicta harmony dictates convergence on the cornerstone of justice of exposition of the law in a coram of three judges of the Supreme Court in the locus classicus, i.e, the **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 which comprised eminent Hon'ble Justices D.A.Desai, V.R.Krishna Iyer, and O. Chinnapa Reddy and would thus dismiss the petition for lack of any intrinsic merit in the face of findings of fact recorded by the labour court against the petitioner and in favour of the workman. The Tribunal is the first and last court of fact and law whose work on sound principles is not to be readily tinkered with unless its work suffers from a fundamental flaw of reasoning or exercise of wayward discretion which might vitiate the

proceedings. I find none of these debilitating infirmities in the award under challenge.

The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

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