

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

CWP No.21546 of 2015

Date of Decision: 8.10.2015

Executive Engineer, PWD (B&R)
Provincial Division, Branch Bhiwani & ors.

... Petitioners

Versus

Smt. Nirmala & anr.

... Respondents

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

Present: Mr. Gaurav Goel, AAG, Haryana,
for the petitioners.

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

RAJIV NARAIN RAINA, J.(Oral)

Having heard learned State counsel and having read the award dated 16.12.2011 passed by the Presiding Officer, Labour Court, Rohtak, I find no ground to interfere with the award which does not suffer from any legal infirmity or fundamental flaw of reasoning or any error apparent on the face of the record. Jurisdictional facts stand accomplished by proof on evidence adduced on both sides.

The respondent-workman was a Class IV employee working on D.C. rates in the Engineering Department at Bhiwani since 1997 and her services were terminated all of a sudden on November 1, 2001. She raised a dispute claiming reinstatement with all consequential benefits by the demand for justice served on 24.12.2001 by way of a demand notice on the management. Reference to Labour Court has been answered in her favour and she has been held entitled to reinstatement to her previous post with continuity of service and 50% back wages from the date of

demand notice i.e. 24.12.2001. Moreover, management's own witness MW-1 Ishwar Singh, SDE Provincial Sub Div. No.1, PWD, B&R, Bhiwani, in his cross-examination admitted that the worker had worked continuously from March, 1997 to 31.10.2001. In cross-examination, he feigned ignorance whether the demand draft dated 16.1.2002 amounting to Rs.3750/- was served on the worker. The Court rightly held that there can be no better proof than an admission by the opposite party. Even assuming that a draft amounting to Rs.3750/- was tendered on 16.1.2002, it would still make no difference. This is for the reasons that retrenchment compensation has to be paid at the time of termination alongwith one months' pay in lieu of notice. Any subsequent offer will not save the termination from invalidation and the labour court is correct in declaring the termination order as illegal. There is no substance in this petition. It is, accordingly, dismissed.

Learned State counsel submits that 50% back wages is on the higher side and should be reduced. But Full Bench of this Court in **Hari Palace, Ambala City v. The Presiding Officer, Labour Court & anr.**, (1979) 2 ILR (Punjab) 243 has held that when the termination is declared illegal full back wages follow unless there are reasons necessitating departure from the general rule. This principle has been followed in numerous judgments following the declaration of law by the Supreme Court in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC, 80. The reasons which may persuade the Court to take a different view on back wages is for the management to demonstrate as burden of proof is on it to plead and prove

that in a given case even after the termination is held to be illegal, full back wages should not follow or only part of back wages should because the worker is gainfully employed while he was out of service of the management due to wrongful termination.

In **Jasmer Singh v. State of Haryana and another**, (2015) 4 SCC 458, which case related to the State, which has filed this petition, the Supreme Court awarded reinstatement and full back wages for service rendered for 240 days as that relief was awarded by the labour court and its findings and discretion exercised was within the law. The law in **Harjinder Singh v. Punjab State Warehousing Corporation**, (2010) 3 SCC 192, **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, (2010) 5 Supreme Court Cases 497, **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors**, (2013) 10 SCC 324; and **Tapash Kumar Paul v. BSNL & ors.**, 2014(3) SCT 106, would have to be kept in mind in moulding relief. Besides, there is a rule against interference with the awards of tribunals without any justification while exercising supervisory jurisdiction under Article 226 of the Constitution of India as explained by the Constitution Bench in **Syed Yakoob v. K. S. Radhakrishnan**, AIR 1964 SC 477. Labour Court dispensations are not like Civil Court decrees. They are passed in the interest of maintaining peace and harmony and Labour Court can exercise jurisdiction which is unknown to other jurisdictions as explained by the Full Court of the Supreme Court in **The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank**, 1950 Supp. SCR 317 : AIR 1950 SC 118. The Supreme Court held that the

labour court is not a court. It has only the trappings of Court, which may function as akin to court but it does not pass decrees but is empowered to make awards which are just and fair. It is not for this Court to substitute opinion of the Labour Court only to take a different view. Therefore, I would not reduce the 50% back wages awarded and would to the contrary leave it open to the workman in case she comes forward claiming full back wages, her case would be considered on merits without being influenced by any thing said in this order.

(RAJIV NARAIN RAINA)
JUDGE

8.10.2015
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