

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

Civil Writ Petition No.2162 of 2015

Date of decision: 14.12.2015

Lal Ji

... Petitioner

Versus

Presiding Officer, Industrial Tribunal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms.Rajwinder Kaur, Advocate, for
Mr.Tribhawan Singla, Advocate,
for the petitioner.
Ms.Amartish Kaur, Advocate,
for respondents No.2 to 4.

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

RAJIV NARAIN RAINA, J.

Notice of motion was issued in this case by passing the following order on February 10, 2015 : -

“The instant writ petition is directed against the award dated 12.9.2013, passed by the Industrial Tribunal, Patiala, whereby while answering the reference, the petitioner-workman has been held entitled to a lump sum compensation of Rs.10,000/- only and the relief of reinstatement has been denied.

Learned counsel appearing for the petitioner would *inter alia* contend that a finding having been returned as regards non-compliance of Section 25-F of the Industrial Disputes Act and coupled with the fact that the workman-petitioner had worked for a period in excess of 6 years i.e. from 17.2.1993 to 10.8.1999, the relief of reinstatement should have been granted. In the alternative, it has been argued that

the compensation awarded i.e. Rs.10,000/- is paltry and much on the lower side.

Notice of motion, returnable for 25.7.2015.”

2. Heard learned counsel for the parties and perused the record and the award. The finding recorded by the Labour Court, Patiala in the impugned award dated September 12, 2013 is that the services of the workman were terminated in violation of Section 25-F of the Industrial Disputes Act, 1947. The employer is the Improvement Trust, Barnala. The petitioner was appointed as a *Mali* on February 17, 1993 on the minimum rate of daily wages then prevailing i.e. ₹ 63/- per day at the time of termination effected on August 10, 1999. The period of service is continuous for 6½ years. One Binder Singh was appointed in place of the petitioner vide Ex.W1. There is a delay of 4 years in raising the industrial dispute by filing demand notice Ex.W5 dated December 13, 2003. The management argued before the Labour Court that the petitioner was not engaged through the employment exchange or through inviting applications from eligible candidates through a open public advertisement in published in a newspaper. The workman had challenged the termination before the Civil Court at Barnala but the suit was dismissed. There is no post of *Mali* in existence with the respondents. Moreover, the recruitment of daily wagers is banned by the Government. No new daily wager was engaged by the management.

3. Ms.Amartish Kaur appearing for respondents No.2 to 4 submits that the civil suit was withdrawn without permission to file a fresh suit and, therefore, the reference was barred by law. The statement suffered by the counsel is noticed in the award. The plaintiff withdrew the suit to file a

proceeding in the Court of the Labour Tribunal with respect to the claim in the suit. The Labour Court held that the delay in raising the industrial dispute is well explained. The Labour Court has reproduced the table in para. 14 of the award drawn from the statement of MW1 Surjit Singh Clerk appearing as a witness for the Improvement Trust, Barnala which reveals that the workman performed duties continuously from August 11, 1998 to August 10, 1999 and had completed 240 days of service in the year immediately preceding the date of termination. MW1 admitted that neither notice nor compensation was paid to the workman and, therefore, it followed that Section 25-F of the Act was violated. The Labour Court found the defence of the management false with respect to protection afforded by Section 25-H of the Act. The admitted position before the Court emerging from the statement of MW1 Surjit Singh is that one Binder Singh had joined the respondents on April 12, 2001 on contract basis on the same post. His joining report was exhibited as W9. This joining report was also produced in the conciliation proceedings which followed the raising of the dispute. There is nothing on record that an opportunity was given to the workman at the time of making fresh appointments to come forward to claim re-entry into service. The provisions of Section 25-H of the Act were also violated. This discredited the theory propounded by the management that there was a ban on recruitment. Besides, MW1 admitted that there was no documentary proof that the Government had banned appointment of daily wagers. The Labour Court after returning its findings in the concluding part appears to have forgotten about its earlier finding on violation of Section 25-H of the Act. On the question of relief, the Labour Court applied the law in **Haryana**

State Electronics Development Corporation Limited v. Mamni; 2006 (2) LLJ 744 (SC). In *Mamni*, the compensation handed down by the Supreme Court was in the sum of ₹ 25,000/- in lieu of reinstatement or back wages. Thereafter, the Labour Court drifted into the question that petitioner Lal Ji-workman was not a regular employee and proper procedure was not followed while providing him employment. The entry was illegal and the Constitution Bench decision of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi**; (2006) 4 SCC 1 was brought to bear in defence of the action. The other ground for denying relief is that the termination took place in 1999 and a period of 14 years has lapsed and, therefore, reinstatement should not be awarded. Neither of these views is a correct statement of law under the labour laws. The length of litigation has no direct bearing or relevance on relief since it is a matter beyond the control of anyone. *Uma Devi-3* is not applicable to the labour laws as explained in **Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana**; (2009) 8 SCC 556. There are a spate of cases handed down by the Supreme Court which are of help to the petitioner in considering relief of reinstatement with consequential benefits. Reference may be made to the law laid down in **Harjinder Singh v. Punjab State Warehousing Corporation Limited**; (2010) 3 SCC 192, **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat**; (2010) 5 SCC 497, **Devinder Singh v. Municipal Council Sangrur**; (2011) 6 SCC 584, **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & Ors**; (2013) 10 SCC 324, **Jasmer Singh v. State of Haryana and another**, (2015) 4 SCC 458 and **Tapas Kumar Paul v.**

BSNL and another; 2014 (3) SCT 106. The last but not the least is the exposition of law in **Fisheries Department, State of U.P. v. Charan Singh**; 2015 (2) SCT 597 : (2015) 8 SCC 150 where the Supreme Court has examined illegal termination from the stand point of right to life and right to livelihood. The period of service as *Mali* for 6½ years is sufficiently long not to blindly apply the law that a workman has no automatic right to reinstatement. *Uma Devi-3* has been considered by the Full Bench of this Court in LPA No.754 of 2010, **Municipal Council, Dina Nagar v. Presiding officer, Labour Court, Gurdaspur and another** decided on 10th October, 2014 in which as many as seven labour law principles have been culled out which are : -

“(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long

period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”

4. In the present case, both Sections 25-F and 25-H of the Act have been violated and also cannot be argued that there is no availability of work when the petitioner was replaced by another daily wage employee, which had the event not happened, could have been a factor in denying relief. When the termination is illegal and *ab initio* void, the the principles laid down by the Supreme Court in **Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited**; AIR 1979 SC 75 would apply with full force, and which is a decision which has been

rejuvenated in the recent dicta of the Supreme Court noticed above. Unfortunately, the Labour Court has denied reinstatement and awarded compensation of only ₹ 10,000/- to the workman which is an erroneous approach in the Labour Court. Even if the relief of reinstatement were to be denied even then the compensation of ₹ 10,000/- could never be sustained in these days of inflation and rise of costs of living index. This amount appears to be paltry enough to say at least that it adds insult to injury. The Labour Court should have been more sensitive in its approach to relief after it returned a finding of violation of Section 25-F of the Act and in the final dispensation it completely forgot to apply the vigour of Section 25-H of the Act after holding that the provision was violated. On both counts, the impugned award cannot be sustained as it suffers from fundamental flaws in law and fact and deficiency of reasoning to make a worthwhile judicial verdict. Interference in this case is warranted as otherwise it may result in a miscarriage of justice.

5. For the foregoing reasons, this writ petition is allowed. The impugned award dated September 12, 2013 is set aside. The petitioner is reinstated to service forthwith with continuity from the initial appointment for all intents and purposes but back wages will be paid in full only from the date of demand notice i.e. December 30, 2003. The amount of arrears be calculated and paid to the workman within three months of reinstatement. Thereafter, a compliance report be filed for the perusal of the Court.

(RAJIV NARAIN RAINA)
JUDGE

December 14, 2015

Paritosh Kumar

