

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

CWP NO.4516 of 2012 (O&M)

Date of decision: 21.9.2015

Dinesh Kumar

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Malik, Sr.Advocate with
Mr.Teupal Dhull, Advocate for the petitioner

Ms. Vibha Dhiman, AAG, Haryana

1.To be referred to the Reporters or not?

2.Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The parameters of award of relief stand satisfied in the present proceedings arising out of Reference No.141 of 2004 under Section 10(1) (C) of the Industrial Disputes Act, 1947 (for short “the Act”). The labour court has returned findings, that (1) there was a relationship of employment between the management and the workman; (2) the period of service rendered by the workman is from September, 2001 to April, 2004; (3) during the calendar year preceding the date of termination, the workman had put in continuous and uninterrupted service within the meaning of Section 25-B of the Act and (4) the termination was brought about without complying with the mandatory provisions of Section 25-F of the Act.

Having returned these four findings of fact, the Presiding Officer, Labour Court, Panipat vide its award dated 9th November, 2011 has declined the relief of reinstatement and instead awarded lump sum compensation of Rs.45,000/- to be paid to the workman by the management in lieu of reinstatement. A time frame for payment has been fixed after which the amount should carry interest at the rate of 9% per annum. The labour court has reached the conclusion without assistance of case law. It is not so that is required to fortify its reasons based on past precedents of judicial rulings and is well within its rights to exercise its discretion to grant relief of compensation without the catch of judicial rulings of the Supreme Court or of the High Court. Nevertheless, in the path of grant of relief, which itself presents a judicial dilemma for the High Court as to what relief is to be granted. It assumes significance that in many process of reasoning in such a case, relief should ordinarily be examined from the point of view of the decisions of the Supreme Court in **M/s Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. and others**, (1979) 2 SCC 80 followed by the decision in **Surendra Kumar Verma vs. The Central Government Industrial Tribunal-cum-Labour Court**, (1980) 4 SCC 443. The burden of proving departure from the normal rule of awarding back wages for breach of ID Act falls squarely on the shoulders of the Management to supply reasons necessitating departure from granting one relief or the other or denying the relief altogether. The major work of the Supreme Court in this field of law was not available to the Labour Court, Panipat when it made the award on 9th November, 2011 as the decisions in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192, **Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, 2010 (3) SLR 663 (SC); **Devinder Singh vs. Municipal Council, Sanaur**, (2011) 6 SCC 584; **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and**

others, (2013) 10 SCC 324, **Jasmer Singh v. State of Haryana**, (2015) 4 SCC 458 and **Tapash Kumar Paul vs. BSNL and another**, 2014 (3) SCT 106 (SC).

The award of the Labour Court does not disclose any reason as to why the Court found it fit to deny relief of reinstatement and instead awarded lump sum compensation of Rs.45,000/- or supplying the reason for the choice made on the quantum of compensation itself. Although relief of payment of a sum by way of compensation in lieu of reinstatement remains largely a debatable issue and the Court can only be guided by the past precedents and apply them to the case in hand, in which dispensation several factors become relevant to the determination and are to be considered while awarding appropriate compensation in place of reinstatement or reinstatement with or without back-wages or reduced or partial arrears of back-wages, these are two sides of the coin.

In moulding the relief, in case compensation were to be awarded in place of reinstatement in this case, which is not found just, this Court would have applied the relief dispensations in the decisions such as **BSNL v. Man Singh**, (2012) 1 SCC 558 [2 lacs for 1 year of service]; **BSNL v. Bhurumal**, (2014) 7 SCC 177 [Rs 3 lacs for 2 years of documented service]; **Assistant Engineer, Rajasthan Development Corporation and Another v. Gitam Singh** (2013) 5 SCC 136 [Rs. 50,000/- for 240 days of service as daily wager] and several other decisions in this line of relief ever holding the golden mean in the judicial balance. Nearer home to have applied the ruling of the Division Bench in **Municipal Council, Dina Nagar v. Presiding Officer, Labour Court, Gurdaspur**, 2015 (1) RSJ 765 estimating Rs. 1 lac for every completed year of service before termination of a peon as just compensation in lieu of reinstatement. It may be noted that these cases are on compensation as reinstatement was denied to the workman on facts as that relief would not follow automatically and are cited only to gauge the range of quantum of compensation. However hard one may try but there will always be some element of pure guesswork involved. Bearing all these aspects in mind in the

foreground it is the considered opinion of this court that the impugned award manifestly appears to suffer from fundamental flaws inasmuch as no reason whatsoever has been ascribed to decline the relief of reinstatement and full back wages and to award a princely Rs 45,000/- instead of it on mere ipse dixit which remains an unsupported statement that rests solely on the authority of the individual who made it. The award looks mostly the handy-work of non-cognitive skills which kept the labour court from doing proper justice, for which reason also; the impugned award cannot be maintained and has to be set aside.

Consequently, the writ petition is allowed. The impugned award dated 9th November, 2011 passed by the learned Labour Court, Panipat is set aside except as below. The petitioner is held entitled to reinstatement with continuity of service. However, keeping in view the fact that the management is a Government department, the arrears of back-wages to serve the ends of justice shall remain restricted to 50% of the arrears of back pay from the date when the demand notice was served on the management till the date of the award. Thereafter, reinstatement will carry current wages. The interest element as awarded by the labour court from the date of the award till payment at the rate of 9% simple interest is sustained and is not interfered with.

(RAJIV NARAIN RAINA)
JUDGE

21.9.2015

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