

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

I.
Civil Writ Petition No.22511 of 2015
Date of decision: 19.10.2015

M/s ANG Industries Limited
... Petitioner

Versus

Parmod Kumar and another
... Respondents

II.
Civil Writ Petition No.22512 of 2015

M/s ANG Industries Limited
... Petitioner

Versus

Nand Kishore and another
... Respondents

III.
Civil Writ Petition No.22513 of 2015

M/s ANG Industries Limited
... Petitioner

Versus

Harish and another
... Respondents

IV.
Civil Writ Petition No.22552 of 2015

M/s ANG Industries Limited
... Petitioner

Versus

Astomajhi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Shiv Kumar, 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.

This order will dispose of the aforesaid four writ petitions.

Reference to facts is from CWP No.22511 of 2015. The challenge is to the impugned awards passed by the labour court.

2. Learned Presiding Officer, Labour Court-II, Faridabad has answered the reference in favour of the workman as to the validity of the termination effected on 13th September, 2010 vide award dated 18th September, 2014 challenged in this petition brought on 16th October, 2015 and has held the same was brought about illegally. The Labour Court has reinstated the workman to service and looking at the length of service rendered and the conduct of the management, has awarded 50% back wages from 18th October, 2010 to 23rd November, 2013 payable within one month of the publication of the award, failing which, the amount would earn 9% interest till realization. Costs assessed at ₹ 5000/- have also been imposed. The date 23rd November, 2013 has been chosen by the Labour Court because an interim award was passed in the National Lok Adalat settling the matter

as compromised between the parties on 23rd November, 2013 which became an interim award. In breach of the interim award, the services of the workman were terminated by the management from which position it is argued by the petitioner that a fresh cause of action arose and, therefore, a fresh demand notice had to be served to raise a fresh dispute and the termination could only be questioned in separate proceedings.

3. The terms of the settlement arrived at between the parties on 23rd November, 2013 have been paraphrased in para. 7 of the award which read as under : -

“7. File put up on 23.11.2013 before National Lok Adalat a settlement was arrived at between the parties to the effect that the workman shall resume his duty with the respondent company on 2.12.2013 with continuity of service and the reference is to be pending only for the adjudication of back wages.”

4. The facts lie in a narrow compass and are taken note of briefly. The workman was appointed as a Turner on monthly wages @ ₹ 4000/- per month on 12th September, 2004 by the petitioning management. The workman claimed that he demanded facilities as per labour laws and payment of minimum wages as were fixed by the Haryana Government from time to time under the Minimum Wages Act, 1948. The request was met with termination on 13th September, 2010.

5. Aggrieved by the termination, the respondent workman served a demand notice within 3 days thereafter on 16th September, 2010. The Labour-cum-Conciliation Officer entered the dispute settlement mode by calling both the parties to his office to try and resolve the dispute. By virtue of powers conferred under Section 12(3) of the Industrial Disputes Act,

1947 [in short, “the Act”], a settlement was arrived at and the workman was taken back on duty on 1st October, 2010. On reinstatement, the services of the workman were again terminated on 18th October, 2010. In these circumstances, the court *a quo* held refusal of work amounts to termination of services and retrenchment within the meaning of Section 2 (oo) of the Act as it stood vitiated without complying with the mandatory pre-requisites of Section 25-F and 25-G of the Act. This termination led to a fresh demand notice issued on 19th October, 2010 against the termination on 18th October, 2010. This is the background in which a dispute was referred to the Labour Court for determination as to whether the termination was legal and valid and if not, to what relief would the workman be entitled to. This time the conciliation proceedings failed and the failure report was exhibited on record as W5 under Section 12(4) of the Act on 28th February, 2011. The management refused to take the workman back in service.

6. On notice, the management appeared and filed its written statement on 9th January, 2012 and contested the case. The management pleaded that the services of the workman were never terminated and they are ready to take him back on duty. The workman filed a rejoinder controverting the pleas taken by the management in its written statement. The workman also filed an application for interim relief praying for passing of an interim award compelling the management to take the workman on duty. The application was contested and the management filed its reply on 4th October, 2012 after availing 3 effective opportunities on 30th August, 2012, 3rd October, 2012 and 4th October, 2012 to do so. In retaliation, the management filed an application for amendment of its written statement.

7. The Labour Court has recorded in the award that the authorized representative of the management made a statement on oath before the Court on 21st January, 2013 that the management has no work for the workman at its Faridabad unit but they are ready to join the workman at their Noida unit. This was a ploy to avoid taking back the workman on duty while persons junior to the claimant/workman and other workers are still working in the Faridabad unit. The plea of the management that the claimant/workman has abandoned his services, was found devoid of merit by the Labour Court and to reach this conclusion the date of demand notice was considered relevant since the dispute was raised promptly on the day following the retrenchment. Apart from that, there was a material circumstance even worse for the management when it had willingly entered into a compromise before the National Lok Adalat leading to the consent order dated 23rd November, 2013 but the same was honoured in the breach since the workman's services were again terminated after about a month without justification. In these peculiar circumstances, the Labour Court was of the view that the letter regarding unauthorized absence from duty did not inspire any confidence. The management witness-2 Dhan Raj admitted in his cross-examination that if there was an offer by the management to the workman to join duty, then the demand notice would have been sealed before the Labour Officer and on these premises, the Labour Court held as proved that the workman was at all times utmost interested to join duty but it was the management who did not want to take back the claimant/workman on duty.

8. The Labour Court applied the law in **State of Punjab v. Jagir Singh;** (2004) 8 SCC 129 cited by the management where the Supreme Court observed that the conduct of a workman plays an important role in not joining duty when asked to. As regards direction to pay back wages, the totality of circumstances are to be considered by the Labour Court. On facts, the Supreme Court held that the workman not joining duties having been asked to do so by a registered letter as well as by publication of notice in the newspaper, the workman would not be entitled to back wages. This case has been distinguished on facts as in the present case, the Labour Court believed as true that the workman was interested to join his duties and after settlement was reached under Section 12(3) of the Act on 30th September, 2010, he joined duties but only to face termination once again. The offer of the management was neither genuine nor bonafide, thought the labour court after appreciating the evidence on record.

9. The Labour Court applied the law declared by this Court in **State of Haryana v. Bani Singh Yadav;** 2005 (1) RSJ 606 that the rule of 'no work no pay' is ordinarily applicable to a case in which the employee voluntarily abstains from work but the principle does not apply to the case in hand. Here the workman was prevented from doing work by a positive act or omission of the employer. This is how the direction of payment of 50% back wages from 18th October, 2010 to 23rd November, 2013 has been issued by the Labour Court.

10. The award presents an interesting feature which is rather rare to find. The reference was with respect to termination and if it was illegal, to what relief would the workman be entitled to. During the proceedings, an

interim award was passed in National Lok Adalat on 23rd November, 2013 and by this consent order settling the dispute, the workman was to resume duty with effect from 2nd December, 2013. The Area Labour Inspector was directed to make compliance of the award and to file its report regarding joining the duty by the workman on 10th December, 2013. Therefore, the present reference remained pending only for determining the back wages and two issues were re-framed by the court below on 10th December, 2013 as under : -

1. Whether the workman is entitled to back wages, if yes, then to what extent?
2. Relief?

11. The result was that the consented reinstatement remained in effective operation and formed no *lis* to be adjudicated. It is for this reason that the impugned award deals only with the subject matter of back wages which have been awarded by the Labour Court at 50% of the amount calculated from 18th October, 2010 to 23rd November, 2013. When reinstatement became a non-issue, then the Labour Court was within its jurisdiction to go into the question of back wages as ancillary and incidental to the dispute.

12. The industrial dispute has been defined in Section 2(k) of the Act to mean any dispute or difference which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. The matters within the jurisdiction of the Labour Courts are specified in Entry 3 of the Second Schedule correlated with Section 7 of the Act which entry empowers the Court to

adjudicate upon “discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed”. In the present case, dismissal explicitly was wrongful and the illegality was cured by consent of parties before the National Lok Adalat which led to the passing of an interim award and, therefore, the question of termination subsided and what remained was the relief of back wages alone and whether they were admissible or not. The term “award” has been defined in Section 2(b) to mean an interim or a final determination of an industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an Arbitration award made under Section 10A of the Act.

13. While examining the correctness of the award this Court has read the evidence by way of affidavit of MW Ashok Kumar Rai, Manager [Personnel & HR] of the petitioner which is a public limited company. The version in the affidavit is that the workman remained absent from duty from 15th October, 2010 without any lawful permission or authorization or leave sanctioned. It is deposed that a call letter was sent to the claimant on 20th October, 2010 asking him to join duty but the claimant instead of joining again filed demand notice with mala fide intention and ulterior motive only to extract money from the deponent company because the claimant was working somewhere else where he was getting a handsome salary. It is said that as per the failure report Ex.W5, it is not a case of termination. It is a case of non-implementation of the settlement. Therefore, the provisions of Section 25-F, 25-N and 25-G of the Act are not applicable. In para. 4 of the affidavit by way of examination-in-chief, it is testified that neither the

deponent had struck off the name of the claimant from the company's muster roll nor had issued any termination letter to the claimant at the time of raising the demand notice on 18th October, 2010. To the contrary, the name of the claimant was maintained on the muster roll for nearly about a year thereafter as such no cause of action accrued in favour of the claimant and against the petitioner company at the time of raising the demand notice on 19th October, 2010.

14. In paragraph 5, the company deposed through its witness that since August, 2012, it is facing acute shortage of orders from their customers. Hence the deponent had reduced the production targets and schedule. On account of this, the deponent company is not possessed with sufficient work for their workmen, as a result of which, the company has reduced its working to 5 days a week. Besides, the financial condition of the company has deteriorated to a great extent. However, the Noida unit of the company has sufficient work load and is ready to take back the claimant on duty in that unit [as on the date of verification of the affidavit at Faridabad on 4th April, 2013]. It is, however, deposed that when normal production is restored, the claimant would be adjusted at Faridabad unit without any further delay. It is said that the claimant is gainfully employed elsewhere on account of which, he is not interested to join duty with the company.

15. Mr. Shiv Kumar learned counsel appearing for the petitioner company submits that the management is still willing to take back the claimant in service but at its Noida unit. He contends that notice dated 20th October, 2010 sent to the workman asking him to join duty immediately failed to elicit any response from him and, therefore it is contended that he

is not entitled to any relief. Petitioner complains that this aspect has not been dealt with by the labour court while it should have. If there is refusal of work, then it does not amount to termination of service and there is no violation of any of the provisions of the Act including Section 25-F thereof. Furthermore, the documents placed on record with the detailed affidavit by way of examination-in-chief of Ashok Kumar Rai MW1/A have not been considered by the Labour Court which when read would dis-entitle the workman to back wages and that is how the impugned award suffers from errors which vitiate the proceedings.

16. This Court finds that the argument raised that the effect of notice dated 20th October, 2010 has not been noticed or appreciated by the Labour Court, is an incorrect statement. In para. 15 of the award, the Court has clearly noticed, “the letter regarding unauthorized absence from duty” but has not relied on it as in its opinion, the document does not create confidence to believe in the same and the reason for this given is that the first demand notice was served on 16th September, 2010 i.e. after the alleged termination on 13th September, 2010 i.e. after 3 days and the second demand notice was filed the next day from the termination of 18th October, 2010 on 19th October, 2010 and this proves that the workman was prepared to join duty but was denied work on one pretext or the other. When the Labour Court has appreciated the letter though without mentioning its date as 20th October, 2010 [which was the next date after the second demand notice was served] then it is not for this Court to reappraise that evidence and form a different opinion or to substitute the view of this Court with that of the Labour Court as that is not within the scope of supervisory jurisdiction

under Articles 226 and 227 of the Constitution while reviewing awards of labour courts and tribunals.

17. The work of the Tribunals can be judicially reviewed largely in terms of the law laid down by the Constitution Bench of the Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477 where the parameters of interference have been laid down for courts to follow and none of those come into play in this case. Appreciation of facts lie in the province of the Labour Court. Adequacy or inadequacy of evidence is of no moment. So long as the Labour Court has applied its mind to the pleadings, the material and relevant facts and the evidence adduced on record by the parties, it remains the court which has the last say, unless the work of the Labour Court is found suffering from a fundamental flaw of law or fact or an error apparent on the face of the record. The discretion exercised by the Labour Court judiciously and judicially is ordinarily not open to review by substitution of opinion reasonably formed on the materials on record. Besides, both the parties acquiesced in re-framing of the issues and confined the contest to entitlement to relief of back wages. The Labour Court has given a substantial cut and monetary relief to the management by ordering only 50% back wages for the period from 18th October, 2010 to 23rd November, 2013 i.e. for 3 years and no substantial injustice has resulted from the award to the petitioner when they still insist, as their cited letter does, that they are still ready and willing to take back the workman to service. There is not a word in the settlement that the consented offer of reinstatement is not for the Faridabad plant but at the unit in Noida and the defence is a ruse to avoid return to employment by trying to build an

arguable case which might hold water but is ominous in its intendment to defeat the respondent workman by means fair and foul. Moreover, other similarly placed workmen were retained in the Faridabad unit and thus there was violation of Section 25G of the Act. The conduct of the petitioner company in breaching the settlement arrived at before the National Lok Adalat and recorded in the interim award is neither fair nor proper. The management is always free to take back the workman to service and honour the settlement in letter and spirit and not treat this case as a case of non-implementation of the settlement to shoot down the reference. Therefore, the Labour Court exercised its jurisdiction in awarding 50% of the back wages for the period specified in accordance with law. This court finds no fundamental flaw or perversity of reasoning in the award. The evidence on record cannot be said to have been misread by the court *a quo*.

18. For the foregoing reasons, the present petition and the three accompanying petitions are found without substance and are accordingly dismissed as not warranting interference in supervisory writ jurisdiction.

(RAJIV NARAIN RAINA)
JUDGE

October 19, 2015
Paritosh Kumar