

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7609 of 2012

Date of Decision: 30.10.2015

Ram Niwas

... Petitioner

Versus

Divisional Forest Officer (Territorial)
Forest Department, Hisar and another

... Respondents

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

Present: Mr. Tara Chand. Dhanwal, Advocate,
for the petitioner.

Mr. Gaurav Goel, 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.

The reasons why I would set aside the award dated September 28, 2010 passed by the learned Labour Court, Hisar endorsed on December 24, 2010 are as follows:-

1) The Labour Court has returned a finding that the termination of services of the workman was vitiated due to non-compliance of section 25-F of the Industrial Disputes Act, 1947 (for brevity “the Act”).

2) The ordinary rule of breach of provisions of section 25-F of the Act by the employer renders termination illegal and *void ab initio*.

3) Rule in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80 is that breach would result in reinstatement and full back wages when other parameters are met for grant of relief.

4) The exception to the rule is that the Court will not grant reinstatement but will consider relevant factors in examining relief. These factors are well known.

5) Such as whether the industry remains active; there is availability of work of the kind from where termination took place, the length of service and duration of employment, its nature and character; the activity being private or public and a host of other factors which cannot be put in a straitjacket and will depend from case to case.

6) This Court could consider the law in moulding the relief with reference to judgments of the Supreme Court rendered in the recent past in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192 from where there is a noticeable shift in the judicial thinking of the Supreme Court reverting the legal position to judicial thought in **Hindustan Tin Works Pvt. Ltd. (supra)**, **Surendra Kumar Verma vs. The Central Govt. Industrial-cum-Labour Court, New Delhi and another**, AIR 1981 SC 422, **Post Graduate Institute of Medical Education & Research, Chandigarh v. Raj Kumar**; (2001) 2 SCC 54 chain of cases. In recent judicial precedents there is a marked departure from cases decided in **Jaipur Development Authority vs. Ram Sahai and another**, (2006) 11 SCC 684; **Ghaziabad Development Authority & another vs. Ashok Kumar & another**, (2008) 4 SCC 261, **Mahboob Deepak vs. Nagar Panchayat, Gajrula and another**, (2008) 1 SCC 575 and **Jagbir Singh vs. Haryana State Agriculture Marketing Board and another**, (2009) 15 SCC 327.

7) The impugned award is dated September 28, 2010 and

restoration of old judicial thought had taken place by then but obviously the further developments in law came later and could not have fashioned the mind of the Labour Court in examining the relief to be granted in this case from the correct perspective and the standpoints available presently. There was no dispute in the Court below as to completion of 240 days of service and, therefore, that test was satisfied.

8) The evidence of the management was closed by Court order when it found no justification to adjourn the case time and again on repeated requests made without producing evidence and therefore the reference No.17 of 2006 was considerably delayed by the management.

9) Reference No.17 of 2006 was answered against the workman. He challenged the same. On April 29, 2010 this Court allowed the writ petition and set aside the impugned award dated October 08, 2008 and remanded the case for fresh adjudication in accordance with law.

10) The lacuna left in the earlier award was that there was no finding with respect to continuous service of 240 days prior to 12 months of the alleged termination dated March 31, 2003. There was a letter issued by the Forest Department advising field officers not to permit workers to complete 240 days and to disable them for claiming rights under the Act by refusing work. This letter dated September 25, 1996 was exhibited and appears to be the foundation of the termination order. The petitioner was a Beldar-cum-Mali working on daily wage basis and, therefore, he was presumed to be on contract. This is the view taken in the second round of litigation in the labour court.

11) The Labour Court returned a positive finding that the

petitioner had served from 1991 to March 31, 2003 i.e. for a period of 12 years. In the view of this Court, service of 12 years is long enough not to be dealt with lightly and is a vital factor in considering the question of relief.

12) The jurisdictional facts were satisfied in the case on both counts examined from the point of view of violations of Sections 25-F and 25-B of the Act. The Labour Court has set aside the termination but has denied reinstatement and awarded compensation of Rs.50,000/- in lieu of reinstatement thinking this sum as just and reasonable amount to be paid to the worker.

13) In **Fisheries Department, State of Uttar Pradesh vs. Charan Singh**, (2015) 8 SCC 150 the Supreme Court has expanded rights flowing from illegal termination which are *void ab initio* as a denial of right to life and right to livelihood and the subject matter has been elevated to higher level of understanding by reading fundamental principles in Article 21 of the Constitution of India into illegal retrenchment. The Supreme Court has drawn strength from the ruling in **Olga Tellis and others vs. Bombay Municipal Corporation and others**, (1985) 3 SCC 545 and **Central Inland Water Transport Corporation Limited and another vs. Brojo Nath Ganguly and another**, (1986) 3 SCC 156 cases.

Mr. Dhanwal relies on the decisions of this Court in **Smt. Chinti Devi vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Distt. Panipat and another**, 2013 (3) S.C.T. 597; 2014 (2) RSJ 3 and **Damyanti v. Presiding Officer Industrial Tribunal cum Labour Court, Panipat and another**, 2012 (4) S.C.T. 506; 2013 (2) SLR 512; 2012 (4) RSJ 704 cases to press his case for relief of reinstatement etc.

In view of the reasons recorded above, the impugned award is neither legal nor proper. It has to be set aside.

As a result, this writ petition is allowed. The petitioner is reinstated to service with continuity with all consequential benefits flowing therefrom. These rights arise as were made available to counter-part employee retained in service when the petitioner's services were illegally terminated and he was left in the lurch and deprived of his livelihood. However, looking to the length of time and that the petitioner was earning 2200/- per month in 2003, which is a small amount, the petitioner will be entitled to full back wages which on a rough calculation made in court work out to be no more than a little over Rs.3 lacs. The petitioner will be reinstated forthwith and the arrears of back wages are directed be paid within three months from the date of receipt of a copy of this order, failing which the amount awarded will earn 18% penal interest till realization. This is to ensure timely compliance of the order.

(RAJIV NARAIN RAINA)
JUDGE

30.10.2015
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