

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

**CWP No.25016 of 2015
Date of decision: 1.12.2015**

M/s HK Textile Engineering

... Petitioner

Versus

Presiding Officer, Industrial Tribunal,
Amritsar & anr.

... Respondents

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

Present: Mr. Akhilesh Vyas, 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.(Oral)

1. The only issue raised in this petition is that the demand notice was served after 8 years of the termination and that is unreasonable delay in raising the dispute which laches would disentitle the petitioner from relief. Just as this argument is raised, the petitioner-management forgets that the compensation has been awarded by the labour Court not for the period 2001-2008 but for the period of service prior thereto where the retrenchment/termination was caused by not following the law and procedure under Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act').

2. Lastly, it is argued by the learned counsel for the petitioner that the provisions of Section 25-F of the Act would not apply in a situation where the workman has taken his dues at the time of termination in full and final settlement of his accounts. If he took the money it would

not mean he waived his statutory rights under Section 25-F of the Act to be paid one month's wages in lieu of notice and retrenchment compensation calculated at 15 days average wages for every completed year of service. If the two figures do not match and the one that has been accepted by the workman is less than the statutory minimum then there is non-compliance of Section 25-F of the Act and the declaration would follow that termination was illegal and ab initio void. For this legal proposition vigorously applied, see recent decision of the Supreme Court in **Fisheries Department, State of U.P. v. Charan Singh**, (2015) 8 SCC 150. Learned counsel further submits that Section 25-F of the Act can only apply in cases where written orders of termination are passed. This argument raised has only to be noticed and rejected because it is a misconception of the law as termination/retrenchment caused by oral orders has the same effect as orders made in writing. The difference is only that oral orders require stronger degree of proof as against orders in writing. Both have the same deleterious effect on the workman as they deprive him of livelihood by loss of job.

3. The finding returned by the court *a quo* is that relationship of employer and employee existed; the petitioner had worked for 240 days in the 12 calendar months preceding the date of termination and the provisions of Section 25-F of the Act were honoured in the breach which was a mandatory pre-requisite for lawful termination. The Labour Court has denied reinstatement when it recorded a finding of fact that the workman has reached the age of superannuation mid litigation and cannot be reinstated to service.

4. In the circumstances, the labour court has moulded the relief and awarded alternative relief of Rs.60,000/- as compensation, which is not an excessive amount, along with interest @ 9% per annum from 2010 till the payment is made, which is also a good direction not open to correction. Since the reference was registered at No.148 in 2010, the Court has applied accruing of interest from the date start of legal redress seeking relief.

5. In the considered view of this Court, the award passed by the Labour Court is unexceptionable and is based on sound application of law and fact determined on reading of the evidence on record. No fundamental flaw is discernible in the work of court *a quo* nor is there any error apparent on the face of the record.

6. For the foregoing reasons, interference is not warranted against the impugned award. Hence, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

1.12.2015
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