

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

Civil Writ Petition No.8187 of 2012

Date of decision: 18.2.2015

Pawan Kumar

... Petitioner

Versus

Presiding Officer and another

... Respondents

Civil Writ Petition No.8388 of 2012

Arjun Dev

... Petitioner

Versus

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.K.L.Arora, Advocate,
for the petitioner.

None for respondent No.2.

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 CWPs No.8187 of 2012 and 8388 of 2012 as common questions of law and fact arise in both the cases which can be conveniently disposed of by a common order. The petitioners were co-employees under the same Management, i.e., Nagar Council, Kartarpur. The

facts are taken from CWP No.8187 of 2012 for convenience.

2. Respondent No.2 is served but remains unrepresented since 25th July, 2012 after notice was issued to the respondent on 3rd, May, 2012. They are proceeded *ex parte*.

3. Heard.

4. Both the petitioners were appointed and retrenched on the same day, i.e., on 1st February, 1994 and 30th June, 1997 respectively. Their services were terminated on 1st July, 1997 in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 [the 'Act']. No notice was issued; no wages in lieu of notice were paid; no reasons were assigned or communicated for retrenchment; no retrenchment compensation was paid for over 3 years of service rendered in the Council. The petitioners claimed that the duties of a Clerk were being taken from them throughout the period of service. The trouble began when their duties were altered to work on trolleys which was the work meant for Safai Sewaks. They made a request to the management that they may not be assigned the duties of a Safai Sewak. The Management insisted on it and asked them not to come for duty if they chose not to work in the changed conditions. They raised a dispute by serving a demand notice for justice on 2nd July, 1997. They sent a letter through registered post which met with refusal. The conciliation proceedings failed and a failure report was submitted to the Government, upon which, a reference was made to the Labour Court, Jalandhar for adjudicating the dispute raised under Section 2A of the Act.

5. The defence of the management before the Labour Court was that the workmen were appointed as Safai Sewaks and not Clerks. However, the period of service was admitted. The management pleaded that the

services were not terminated but the workmen absented themselves and refused to work on posts they were appointed i.e. Safai Sewaks. The workmen filed their respective replications before the Labour Court and the matter went to trial. Rather interestingly, the management filed a resolution dated 22nd February, 1999 [P-9] where it was resolved by the Council to terminate the services of the petitioners from 1st July, 1997. Thus, a case of absence was a cooked up story. Parties led their respective oral and documentary evidence. The Labour Court by its award dated 30th August, 1999 declined the reference. The petitioners filed CWPs No.1644 and 1645 of 2000 challenging the award. The learned Single Judge remanded the matter for fresh trial on 11th February, 2010. The impugned order dated 30th August, 1999 was set aside and the parties are directed to appear before the Labour Court on 10th March, 2010. Parties were permitted to lead evidence since statements of the workmen were recorded *ex parte* in the previous proceedings. Both the workmen filed their affidavits by way of examination-in-chief. Their cross-examination was recorded in December, 2011 in the next round of litigation. Both the petitioners deposed that one of them is Graduate while the other a 10+2 pass and both were performing the duties of a Clerk throughout as were performed by Octroi Clerks, Bill Clerks etc.

6. On 30th June, 1997, an order was passed wherein they were asked to work as a Safai Sewak by changing their nature and track of work. The management led RW1 Paramjit Singh as its witness. He deposed that the services rendered by the petitioners were good and regular. He could not say whether the workmen were performing the duties of a Clerk. He volunteered that they were Safai Sewaks engaged on contract basis. He

denied that they were working on Octroi Clerks and were preparing bills and maintaining the stock register. He denied the suggestion that the Clerks cannot be made to work as Safai Sewaks nor could they be asked to perform menial duties. The witness admitted that the services of the petitioner were terminated and they were asked not to join duty. He admitted that the workmen had completed 240 days of service during the 12 calendar months preceding 30th June, 1997.

7. Similarly, RW2 Tilak Raj appeared who was a Safai Sewak. The management witness was put to cross-examination and he deposed that he had been working in the Committee for the last 20-22 years. He deposed that the Municipal Committee [Council] had never given him an appointment order but he stated that he had seen the workmen issuing bills though he denied that they were working as Clerks. He empathetically said that he was working as a Safai Sewak but the workmen were issuing bills. After the evidence concluded, the Labour Court passed the impugned award dated 1st February, 2012 and returned a finding in favour of the petitioners that they had worked continuously from 1st February, 1994 to 30th June, 1997 and their services were terminated in violation of the provisions of Section 25-F of the Act. The Presiding Officer, Labour Court, Jalandhar held that the workmen were appointed as Safai Sewaks on contract basis and not as Clerks. In reaching the conclusion, the Labour Court examined the evidence on record and in the absence of appointment letters found, it did not accept that they had worked as Clerks. The court *a quo* found that the Government had authorized the Council to engage 7 Part-time Sweepers on contract basis and the President of the Council was delegated the authority to appoint Part-time Sweepers and they were so engaged by him.

8. In the opinion of this Court, the findings of the Labour Court on this issue ought not to be interfered with even though the same can possibly be doubted because from the cross-examination of the management witnesses it has come on record that the workmen were issuing bills while they served which detracts from the plea that they were Safai Sewaks. I do not think Safai Sewaks issue bills etc. It is possible that the Council utilized the services of the workmen against the sanctioned posts of Sweepers by an adjustment to carry out exigencies of administration. I would not risk saying anything further as it is not material for the proposed order I intend to make.

9. Nevertheless, on the question of moulding the relief, I have serious doubt as to the justification in the labour court jumping to a conclusion that the termination orders were valid but for the workmen were denied retrenchment compensation of ₹ 2062.50 which now the respondent management is liable to pay to remove the effect. This is not a correct line of reasoning. If the termination is justified then *a priori* nothing remains to be adjudicated before the labour court. This is a rudimentary principle of labour law in the Act. It is only in case where the termination is found illegal and void could the question of payment of compensation arise. But such a finding could not have been returned in the face of violation of Section 25-F of the Industria Disputes Act, 1947 which is a mandatory pre-condition to valid retrenchment/termination. Therefore, I would not agree with the labour court that the termination order visited upon the petitioners was in consonance with law. If the termination is not in consonance with law as enunciated in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. and Ors**, (1979) 2 Supreme Court Cases

80; **Anoop Sharma vs. Executive Engineer, Public Health Division no. 1,**

Panipat (Haryana), (2010) 5 Supreme Court Cases 497; **Harjinder Singh v. Punjab State Warehousing Corporation** ; (2010) 3 SCC 192 and **PGIMER v. Raj Kumar**, (2001) 2 SCC 54, then reinstatement must follow as an industrial consequence of passing a void order of termination and thus, I would interfere with the findings on issue No.2 recorded by the court below. It is not enough for the Labour Court to order the monetary amount of compensation payable at the time of retrenchment later which was not co-terminus with termination of services. The flaw remains that has to be cured by positive action in writ proceedings since that part of the order is found perverse and not sustainable in the eyes of law. The reference to the Labour Court was with respect to the validity of the termination and that was all it was required to answer. The question of actual reimbursement of retrenchment compensation in terms of the Act which ought to have been paid on termination is a matter appropriate in execution proceedings and the Labour Court has done no favour to the workmen to give them paltry amounts of ₹ 2062.50 each representing the value of retrenchment compensation calculated @ 15 days average monthly wages/pay for each completed year of service. Thus, there has been an abject failure to apply known principles of industrial law with respect to illegal and void termination and the relief admissible, even though it may not follow automatically on reinstatement has to follow the consequences entailed in the judgments noticed supra.

10. For the foregoing reasons, the petitions are allowed. Both the impugned awards are quashed following the recent ruling of the Supreme Court on 13th January 2015 in **Jasmer Singh v. State of Haryana and another** in Civil Appeal No.3456 of 2015 arising out of SLP No.1532 of

2014; and earlier in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalay & Ors**; (2013) 10 SCC 324 where the Supreme Court has guided Courts that in case of violation of statutory provisions relating to wrongful/illegal termination of service, the Courts must always keep in mind that in such cases, the wrongdoer is the employer and the sufferer is the employee and there is no justification to give a premium to the employer of his wrong-doing by relieving him of the burden to pay to the workmen his dues in the form of full back wages. [See para 38.5 and 38.6 of *Deepali Gundu Surwase* case]. In the end, the Supreme Court has guided that in such cases, it would be prudent to adopt the course suggested in *Hindustan Tin Works Pvt. Ltd [supra]* where the salutary principle has been laid down, observing :-

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an

awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation upto the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workman were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which

were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamldar Mandal, [1971] 1 LLJ 508 and a Division Bench of the Allahabad in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court-II, Lucknow & ors.,[1971] 1 LLJ 327 have taken this view and we are of the opinion that the view taken therein is correct."

11. In Deepali Gundu Surwase [supra] the Supreme Court denounced denial of relief for rights violation in labour law and re-emphasized and re-vitalized the principles in *Hindustan Tin Works*, above quoted, observing as follows:

“ In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame.

Therefore, in such cases it would be prudent to adopt the course suggested in [Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private](#)

Limited (supra).”

12. The petitioners shall have costs of these proceedings assessed at ₹ 10,000/- each, which hereafter becomes due and payable to them by the respondent management. The petition stands disposed of in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

February 18, 2015
Paritosh Kumar