

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3030 of 2013

Date of Decision: 08.09.2015

M/s The Palwal Cooperative Sugar Mills Limited

... Petitioner

Versus

Umesh Chand and another

... Respondents

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

Present: Mr. R.N. Lohan, Advocate,
for the petitioner.

Mr. Anil Shukla, Advocate,
for respondent No.1.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This petition has been filed by the management assailing the award of the Labour Court-II, Faridabad dated October 30, 2012 which has granted reinstatement to service with all consequential benefits, the monetary from December 6, 2003.

The issue involved: When the dispute between the parties stood settled in conciliation proceedings and the management undertook to take the workman back to service and grant him continuity but without back wages then resiling from the agreement would at least mean that the fiction of continuity in service would stand extended from the date of termination to the date of the settlement sanctified by the parties themselves and the period merged with the settlement would count towards 240 days of

continuous service by the fiction in Section 25B of the Industrial Disputes Act, 1947 or not?

Law attaches importance and sanctity to a settlement arrived at in the course of conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on the parties to which it relates.

On facts it may be noticed that the services of respondent-workman were retrenched on December 25, 2002 and when the dispute was raised by demand for justice the settlement within the meaning of Section 2 (p) of the Act was arrived at on February 05, 2003 before the conciliation officer during the course of conciliation proceeding. The settlement arrived at during conciliation proceedings under section 12 (3) of the Act which was otherwise just and fair would remain sacrosanct between on the parties and binding as contract and thus forms part of the report of the conciliation officer forwarded to the appropriate government informing that the dispute has been settled. Therefore, the dispute *a fortiori* will not be referred for adjudication.

Mr. Shukla appearing for the workman submits that the management reneged from the settlement and breached its covenanted terms which was not a fair thing to do since it compelled the workman to raise the dispute all over again by a serving the second demand notice dated December 09, 2003 on the management and made him lose precious time in pursuit of an award of reinstatement and consequential relief against alleged illegal termination. This is what led to the reference to the labour court for determination whether the termination was justified. This aspect has also not been considered by the Presiding Officer, Labour Court-II, Faridabad in

the impugned award dated October 30, 2012 where reinstatement to service has been ordered with full back wages from December 06, 2003, that is, from the date of the second demand notice, the first having resulted in the settlement. The date should actually be February 06, 2003 since the management was under bounden duty to honour and implement its undertaking given to the conciliation officer. That would be the fair and proper date to grant monetary relief.

The labour court has fallen in grievous error in confining the determination to the calculation of 240 days backward from the date of termination and held that the case of the workman was covered by Section 25B (2) (b) (ii) of the Act by the fiction of completion of 120 days of service with the Sugar Mill which is an industry seasonal in nature. The principle applied was wholly inapplicable and the provision was clearly misread, if it was read at all. Section 25B of the Act provides legal fictions on which one of the major pillars of the structural design of labour laws is defined. The provision prescribes as follows :-

“25B. Definition of continuous service.-

For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date

with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case;*
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and*
- (ii) one hundred and twenty days, in any other case.*

Explanation: *For the purposes of clause (2), the number of days on which workman has actually worked under an employer shall include the days on which-*

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;*
- (ii) he has been on leave with full wages, earned in the previous year;*
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”*

This was a precarious view taken by the labour court without due application of mind in a seasonal industry which normally works for half the year dependent on sugarcane crop. If relief based on the interpretation of Section 25B (2) (b) (ii) placed by the labour court is to be believed without any extrinsic help or aid of any other legal principle then relief has to be denied at once to the workman as one limb of the

jurisdictional facts required to be proved will not be satisfied by evidence. He would then have served for less than 240 days. It is trite law that those workman who do not complete uninterrupted and continuous service for a period of one year as defined are dispossessed of industrial rights. These pitfalls on the road to justice and law were not visualized by the labour court and the legal balance has to be restored by conforming to law.

Instead, the labour court could easily have resolved the issue on the basis of binding nature of settlements arrived at during the course of conciliation proceedings which are sacrosanct in nature and are aimed at restoration of industrial peace and therefore binding. This was the broader angle to have been examined, equipped with the understanding of the workings of labour laws as the labour court is, to be the governing principle in the landscape of the case but the court below saw relief from a narrow and wrong angle and based its decision on a wrong principle which requires to be corrected in judicial review since it goes to the root of jurisdiction of the labour court. And in granting relief on a wrong principle the labour court could not have remained obsessed by the decision of this Court rendered by me in **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 which was not at all applicable to the facts of the case in hand. The conclusion in the impugned award may be justified but the reasoning is seriously flawed. Blind reliance should not be placed on precedents unless their dicta or ratio dictates reason otherwise.

The underlying object of the Act is to settle disputes to restore industrial peace and harmony which was disturbed by the wrongful act of

employer and crease out frictions that have persisted between the parties to the dispute. The matter can be viewed from yet another angle so far as the proof of the jurisdictional fact of “continuous service” is concerned within the meaning of Section 25B read with Section 25F of the Act and that is the period between the date of termination and the settlement when the employer agreed by to take back the workman to service then relationship between the earlier disputing parties would be covered by principle of consent and waiver and past actions or inactions would stand erased by conduct rendering the period in between as continuous service. This is how the calculation of 240 days backward from the date of termination spread over 12 calendar months should have been formulated by the Court *a quo* to achieve grant of relief as just and due.

It may be recorded that while issuing notice of motion in this case, the operation of the impugned award was stayed subject to the provisions of Section 17B of the Act.

The Court is informed that the management took the decision that it was thought prudent not to pay last drawn wages under section 17B but to re-employ the workman so that he could earn his wages by the dint of his labour in the Mill during the pendency of the petition. He rejoined service on January 23, 2013 and ever since then the workman is on duty. In this view of the matter even equity demands that the workman should be continued in service.

After hearing Mr. R.N. Lohan and Mr. Anil Shukla appearing for respective the parties, for the reasons recorded above, I would partially allow the appeal the petition and confirm the conclusion of the impugned

the award but for different reasons recorded herein since the reasoning of the labour court in allowing the reference on the touchstone on section 25B (2) (b) (ii) of the Act and the manner of computing 240 days of service is not approved and in that finding there is a fundamental flaw of reasoning but at the same time major relief is held admissible via the settlement arrived at during the course of conciliation proceedings.

However, in the matter of moulding the relief this Court is of opinion that since the terms of the settlement deprived the workman of back wages prior to February 05, 2003 by consent the agreement will remain the controlling factor. The demand notice was issued on December 09, 2003.

It was not disputed by the parties that the mandatory pre-conditions of retrenchment and the beneficial molars of Section 25F of the Act were not acted upon by the management when the workman was exited from service. I need not dwell at length on the already formulated view of the Supreme Court and the pendulum swung on the effect of violation of Section 25F which ordinarily would result in reinstatement in **Harjinder Singh v. Punjab State Warehousing Corporation**; (2010) 3 SCC 192 followed by decisions rendered in **Anoop Sharma v. Executive Engineer Public Health Division No.1, Panipat (Haryana)**, (2010) 3 SCC 497 **Devinder Singh v. Municipal Council Sangrur**; (2011) 6 SCC 584, **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & Ors**; (2013) 10 SCC 324 and **Jasmer Singh v. State of Haryana and another**, (2015) 4 SCC 458 and the classic **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80. No reasons have been shown or proved by the petitioner management to

commend the court to make a departure of the normal rule and deny reinstatement to service.

In the matter of grant of back wages the principles laid down inter alia in **Novartis India Limited v. State of West Bengal and Others**, (2009) 3 SCC 124 are to be kept in mind as guided by the Supreme Court when it referred to the shift in the approach regarding payment of back wages observing:-

“There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right.”

Keeping in view the above and for the reasons recorded, the award is upheld in part but is suitably modified with respect to monetary

relief. Reinstatement is upheld and to that extent the petition is dismissed. Full back wages will not be one hundred percent as awarded but they will require to be scaled down by half for reasons as below. Seniority will follow from the date of the original engagement. As far as back wages is concerned for the period of forced idleness and by keeping in view that the award of reinstatement was implemented even before the writ was filed [as the Court is informed by the learned counsel at the hearing today] and stay granted in favour of the management as an interim measure subject to Section 17B of the Act, without disclosure of factum of reinstatement subject to pending petition, then I am of opinion that to serve the ends of justice the respondent workman deserves to be granted 50% back wages with effect from February 05, 2003 as just, fair and equitable to both the parties and the award of the labour court as damages caused by an illegal order and the impugned award shall stand modified accordingly.

Accordingly, the petition is partially allowed and at the same time is partially dismissed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

08.09.2015

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