

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

Civil Writ Petition No.4657 of 2013

Date of decision: 27.11.2015

Uday Veer

... Petitioner

Versus

The Headmaster, Govt. High School and others.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Anil Shukla, Advocate,
for the petitioner.

Mrs.Vibha Dhiman, 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. (Oral)

Aggrieved by the award made by the Presiding Officer, Labour Court-III, Faridabad on 3.3.2011, the State preferred CWP No.9583 of 2011 in this Court challenging the award which granted reinstatement with 10% back wages to the petitioner. This Court found no infirmity in the award to the extent it granted reinstatement to service and dismissed the writ petition on 28.3.2012. However, while dismissing the writ petition, this Court reserved to the workman his right to challenge the award on the question of quantum of back wages in case a challenge was brought pleading for higher back wages in which case the same would be decided on merits without referring to the order passed on 28.3.2012.

2. The State in its reply has confirmed the position that against the order passed by the learned Single Judge Letters Patent Appeal No.1451 of 2012 was unsuccessfully carried before the Division Bench and the challenge to the order failed on 20.9.2012. A copy of the order has been placed at R-1.

3. Still dissatisfied with the order passed by the Division Bench of this Court upholding the order passed by the learned Single Judge, the State carried an SLP No.3982 of 2013 which was dismissed on 1.2.2013 in limine. Therefore, the order of the learned Single Judge upholding the reinstatement has attained finality and it is not open to the State of Haryana to question reinstatement.

4. The present writ petition has been filed by the workman feeling aggrieved by the award of back wages in a paltry percentage of back wages granted at 10% of the arrears. It may be mentioned that the period of service rendered by the workman in the Department was from 14.8.2003 to 28.2.2006.

5. Mr.Anil Shukla learned counsel for the petitioner-workman submits that the Labour Court has assigned no reason to scale down the back wages to 10% and has, therefore, failed in its duty to assign reasons for arriving at the conclusion. To that extent, the award of the Labour Court is silent since the process of reasoning has not been disclosed by the Labour Court except to say that the facts and circumstances of the case demand award of only 10% back wages. The finding on this issue cannot be sustained and, therefore, interference is called for in the award.

6. It is pointed out by the learned State counsel that the issue before the learned Single Judge *inter alia* was that the workman was a part time employee working as *Kahar* [Water Carrier] in a Government school and was drawing pay at rates of minimum wages fixed for part-time employment by the Deputy Commissioner of the district exercising from time to time the powers under the Minimum Wages Act, 1948. Since the termination has been held to be illegal it is ab-initio void. Reinstatement has already been ordered and the petitioner has joined service in compliance of court orders after dismissal of the SLP.

7. It would be fair and proper in the considered view of this court in the totality of facts and circumstances of the case presented that the back wages be awarded @ 50% of the arrears of back wages fixed from time to time during the intervening period from 2006 till date as gradually increasing from revision to revision of the minimum wages to secure the ends of justice. This is also a factor which weighs with this Court in modifying the award and directing that the workman would be entitled to 50% back wages from the date of demand notice till realization. It is understood that in case the employment was full time, then full back wages may have been justified when once a finding has come from the labour court that the termination was illegal and ab-initio void for want of compliance of section 25-F of the ID Act. Towards this end, the decision of the Supreme Court in **Fisheries Department, State of U.P. v. Charan Singh**, (2015) 8 SCC 150 may to be kept in view while moulding the relief.

8. For the foregoing reasons, the writ petition is partially allowed.

The impugned award to the extent it awards 10% back wages is set aside

and the same is accordingly modified by holding that the petitioner would be entitled to 50% of the back wages as calculated above. The amount be computed within 2 months and paid to the petitioner within the next one month.

(RAJIV NARAIN RAINA)
JUDGE

November 27, 2015

Paritosh Kumar