

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

Civil Writ Petition No.8489 of 2013

Date of decision: 23.2.2015

Smt.Nawabo Devi

... Petitioner

Versus

The Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ramesh Goyat, Advocate,
for the petitioner.

Mr.Pardeep Singh Poonia, Advocate,
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 is an ex part-time worker's petition under Article 226 of the Constitution of India against the award dated 23rd July, 2012 passed by the learned Labour Court, Panipat declining the relief of reinstatement and awarding instead a lump sum compensation of a meagre ₹ 25,000/- for 13 years of service rendered. The amount is made payable within 3 months from the date of publication of the award, failing which, the management-respondent will be liable to pay interest @ 9 percent per annum. A positive finding has been returned that the services of the petitioner were illegally terminated without following due procedure under Section 25-F of the

Industrial Disputes Act, 1947 (for short, “the Act”). Back wages have been declined by the Labour Court for the reason that in the demand notice served by her, she had not stated that after her termination, she remained without a job. The Labour Court noticed from her affidavit filed before the Court, a statement that she is unemployed after her illegal termination. This has unfortunately been viewed as a self-serving statement not substantiated by corroborative evidence proving that during the interim period, she lacked making every effort to get her name enrolled in some Employment Exchange or in some private employment agency as an aspirant for a job and, therefore, her bald statement could not be believed that she remained unemployed during the material period. The Court *a quo* held that onus to prove that the workman remained unemployed was upon her. The Labour Court applied the law in **Kendriya Vidyalaya Sanghathan etc. v. SC Sharma**, 2005 Judgments Today (1) SC 336 to hold that it was on the workman to prove that he/she stands unemployed during the interim period in order to claim back wages. If the worker in her affidavit before the Court stated that she remained unemployed after her illegal termination, then onus shifted on the management to disprove the assertion. The management failed to rebut the assertion in the affidavit. It is one thing to say that the burden was upon the workman to prove that she was unemployed. It is another thing to say that onus did not shift upon the management. It is trite to say that burden of proof is static while onus can shift.

2. In paragraph 14 of the award, the Labour Court has held that the petitioner was victimized by the management and then proceeds to examine the question of what relief would she be entitled to. If the

petitioner was victimized and her termination was illegal, then it follows *a priori* that termination order is void. If it is void, then only question which arises is whether the petitioner would be entitled to reinstatement with full back wages or part back wages or no wages at all or to be denied reinstatement by reasons recorded in writing and to examine the case from the point of view of compensation in lieu of reinstatement and in what quantum. Towards this end, there is no reasoning discernible in the impugned award as to why reinstatement was declined or why should not the petitioner be entitled to compensation which is realistic and not just a paltry, flea bite ₹ 25,000/- for 13 years of service rendered in Uttar Haryana Bijli Vitran Nigam, Gohana, the period of service as Janitor served by the petitioner from 1st March, 1988 to 31st August, 2001 when her services were illegally terminated. However, I find that the dispute was raised, for the first time, by serving the demand notice dated 20th July, 2005, i.e., 4 years after the termination. If the demand notice was raised after 4 years, then it appears to me that that should be iniquitous to the management and thus sufficient reason to deny reinstatement in a statutory corporation and to that extent, I find no reason to upset the award of the Labour Court when it denies reinstatement but not for the insufficient reasons recorded in the award to deny such relief in absence of lively discussion on the point. Though the workman in para. 5 of the demand notice explained the delay stating that her services were terminated as per instructions of the Government but an assurance was given and hope held out to her by the management that she would be taken back to work in the near future. On this assurance she continued making enquiries from the office and visited it

many times but she was not taken back. She says that the employees were appointed on contract basis for 89 days and her case was not considered. In these circumstances, she did not seek her judicial redress due to false assurances of the management. There is no adequate proof on record of such statements and I would refrain from entering this province. However, the amount of compensation awarded by the Labour Court in lieu of reinstatement and by way of lump sum payment in an trifling amount of ₹ 25,000/- is not in tune with current status of awarding compensation in lieu of reinstatement. See several cases including **Assistant Engineer, Rajasthan Development Corporation and Another Vs. Gitam Singh**, 2013 (5) SCC 136, **BSNL v. Man Singh**, (2012) 1 SCC 558, **BSNL v. Bhurumal**, AIR 2014 SC 1188 and LPA No.754 of 2010: **Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur & Anr.** handed down by this Court on 29th November, 2014 while sitting in Division.

3. In *Municipal Council, Dina Nagar's* case, this Court has standardized compensation packages for Class-IV employees @ ` 1 lac per year in a case of municipal employment where peons and pump operators were rendered surplus due to introduction of modern system of water supply which was less labour intensive.

4. In calculating compensation, in this case the period of part-time service is about 13 years excluding the period 2001 to 2005 (year of demand notice) which is about 9 effective years, the compensation payable is worked out at ₹ 5 lacs by making a substantial cut in the compensation

model in *Municipal Council, Dina Nagar's* case which was for full time ex

employees. However, ₹ 25,000/- awarded by the Labour Court will be in addition.

5. Consequently, this petition is partly allowed. Reinstatement is denied but compensation is assessed at ₹ 5.25 lacs in lieu of reinstatement for past loss and future deprivation of livelihood. Interest as awarded by the Labour Court for the period it operates is nullified. However, if the amount of compensation as assessed by this Court is paid within 2 months from the date of receipt of a certified copy of this order, then no interest would be payable, failing which, interest @ 9 percent would run on the principal amount of compensation with effect from the date of this order till realization. The award stands modified accordingly.

(RAJIV NARAIN RAINA)
JUDGE

February 23, 2015
Paritosh Kumar