

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

L.P.A. No. 1648 of 2013

Date of Decision: September 08, 2015

Surinder Singh

...Appellant

Versus

M/s Nishat & Malwa Bus Private Limited and another

....Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. Prateek Mahajan, Advocate,
for the appellant.

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SATISH KUMAR MITTAL, J.

Surinder Singh, the workman has filed this intra-court appeal under Clause X of the Letters Patent against the order dated 2.7.2013 passed by the learned Single Judge, whereby the writ petition (CWP No.13658 of 1993) filed by the management for quashing of the Award dated 6.4.1993 (Annexure P9) passed by the Labour Court, has been disposed of with the observation that the appellant-workman is not entitled to the back wages on the principle of “No pay for no work” and also with the efflux of time the plea of reinstatement has become illusory.

The appeal was barred by limitation and in this regard the appellant had filed an application for condonation of delay in filing the appeal. After notice, when no one had appeared on behalf of respondent No.1, he was ordered to proceed against ex-parte and the application was

allowed vide order dated 09.12.2013 and the delay of 4 days in filing the appeal was condoned, and notice of motion was issued.

This appeal is pending for the last two years. At one point of time, one Mr. Vishal Sharma, Advocate had put in appearance on behalf of respondent No.1 and he sought time to have instructions with regard to the full and final settlement of the payment in question, but later on nobody had put in appearance on behalf of respondent No.1. From the last 2/3 proceedings none has appeared on behalf of respondent No.1.

Today, we have heard the learned counsel for the appellant and gone through the impugned order passed by the learned Single Judge as well as the Award passed by the Labour Court.

In this case, the Labour Court vide its Award dated 6.4.1993 found the termination of the services of the appellant-workman not justified being violative of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and ordered his reinstatement with continuity of service and full back wages.

A perusal of the Award of the Labour Court clearly indicates that the Management contested the claim of the appellant and both the parties led their evidence. The Labour Court after considering the evidence led by both the parties came to the conclusion that the appellant workman had worked for more than 240 days and his services were illegally terminated without complying with the mandatory provisions of Section 25-F of the Act. In view of those findings of fact, the Labour Court held the termination of the services of the appellant workman as not justified and ordered his reinstatement with continuity of service and full back wages.

The learned Single Judge without considering the findings of fact recorded by the Labour Court and without appreciating the evidence led by both the parties before the Labour Court, has disposed of the writ petition by the impugned order, while making the following observations:-

“Be that as it may, this Court is now confronted with two aspects of the matter, (1) the award having been stayed subject to the provisions of Section 17-B of the Act, the workman was not reinstated either on account of the fact that he did not report to the petitioner/Management or on account of the fault of the petitioner. There is no material to suggest that either of these courses was adopted by the petitioner or the respondent/workman. (2) After a lapse of about 20 years, it will be futile even to explore the possibility of reinstatement of the respondent/workman. In so far as the back wages are concerned since the respondent/workman never worked for the period when he remained out of work, he would not be entitled to the said benefit on account of the principle of No pay for no work.

For the aforesaid reasons, the relief which could have been afforded to the respondent/workman in the eventuality of acceptance of the petition, has been rendered illusory. The matter now being purely academic, the same need not be dealt with any further.

Consequently, the instant petition is disposed of with the observation that the respondent/workman is not entitled to the back wages on the principle of No pay for no work and the efflux of time has completely rendered the plea of reinstatement illusory.”

In our view, the aforesaid order passed by the learned Single Judge is not sustainable. Merely because on the writ petition filed by the

Management the Award having been stayed subject to the provisions of Section 17-B of the Act; and also that the workman did not report to the Management for joining the duty; and merely because the matter remains pending for twenty years in the High Court, it cannot be said that the order of reinstatement passed by the Labour Court has been rendered illusory and also that the workman is not entitled for back wages on the principle of “No pay for no work”. In our view, the learned Single Judge was not justified in disposing of the writ petition of the Management while declaring that the order of reinstatement has been rendered illusory with the efflux of time and also that the workman is not entitled for the back wages. Once the Labour Court has recorded a finding that the termination of the services of the workman was violative of Section 25-F of the Act and ordered for reinstatement of the workman with continuity of service and full back wages, the learned Single Judge could have modified the relief of back wages keeping in view the long period in which the workman remained out of service; and instead of ordering reinstatement, suitable compensation could be awarded to the workman but the reinstatement of the workman cannot be declared illusory.

Thus, in our opinion, keeping in view the facts and circumstances of the case, the order passed by the learned Single Judge is not sustainable and the same is modified. We are of the view that since the workman had worked only for one year and now a long time has elapsed, instead of reinstatement of the appellant-workman, we deem it appropriate to award him the compensation of ₹ 1.00 lac. Hence, we direct the

respondent-Management to pay an amount of ₹ 1.00 lac to the appellant-workman within a period of three months. If the said amount is not paid within the stipulated period, the respondent-Management shall liable to pay the interest on ₹ 1.00 lac @ 9% per annum from the date of termination of the services of the appellant-workman till realization.

The appeal stands disposed of in the aforesaid terms.

(SATISH KUMAR MITTAL)
JUDGE

September 08, 2015
vkg

(MAHAVIR S. CHAUHAN)
JUDGE