

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

Date of Decision: September 23 , 2015
Letters Patent Appeal No. 886 of 2013 (O&M)

Satbir Singh aka Satyabir Singh -----Appellant

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court and
another -----Respondents

AND

Civil Writ Petition No. 18626 of 2010 (O&M)

General Manager, Haryana Roadways, Gurgaon -----Petitioner

Versus

Satbir Singh and another -----Respondents

CORAM: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Pankaj Jain, Advocate, for the appellant in LPA No. 886 of 2013 and for respondent No. 1 in CWP No. 18626 of 2010.

Shri Sudeep Mahajan, Additional Advocate General, Haryana for respondent No.2 in LPA No. 886 of 2013 and for the petitioner in CWP No. 18626 of 2010.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Civil Miscellaneous No.2901-LPA of 2015:

1. By way of this application under Rule 4 of Order 22 of the Code of Civil Procedure, 1908, a prayer is made to bring on record legal representatives of the appellant, namely, Satbir Singh alias Satyabir Singh, who has died during the pendency of the appeal on May 23, 2015.

2. Learned State Counsel has no objection if the application is accepted.

3. In view of the above, the application is allowed and legal representatives of the appellant are permitted to be brought on record.

4. Amended memo of parties is taken on record.

Main Case:

5. Letters Patent Appeal No. 886 of 2013 and Civil Writ Petition No. 18626 of 2010 involve common questions of fact and law and, as such, are proposed to be disposed of by this common judgment being recorded in Letters Patent Appeal No. 886 of 2013.

Fact situation:

6. Before endeavouring to resolve the controversy involved in the matter, let us acquaint ourselves with the facts necessary for resolution of the controversy.

7. Satbir Singh aka Satyabir Singh (here-in-after referred to as, 'the workman') joined Haryana Roadways (here-in-after referred to as, 'the management') as a conductor on April 04, 1990. The management served a charge sheet dated July 08, 1991, upon the workman alleging embezzlement of an amount of Rs. 65/- by not issuing tickets to the passengers. In the domestic inquiry allegation against the workman was established and, as a consequence, vide order dated January 06, 1994 his services were terminated. Having remained unsuccessful in departmental appeal, the workman raised an industrial dispute wherein, vide order dated December 12, 2001, learned Labour Court held the domestic inquiry to be unfair and vide award dated August 29, 2002, held the workman to be entitled for

reinstatement with continuity of service and full back wages.

8. Award dated August 29, 2002 having been challenged by the management vide Civil Writ Petition No. 17131 of 2003, this Court, vide order dated August 24, 2009, set it aside and remitted the case back to the learned Labour Court for fresh disposal by observing as under:

“The Labour Court failed to note that if the termination is justified the question of compensation under Section 25F does not arise. Since evidence had been led before the Labour Court by the management accepting the Court’s earlier finding that the enquiry before the enquiry officer was not fair and proper, the Labour Court was bound to examine the evidence tendered before it and proceed to pass an order after considering the quality of evidence and coming to a conclusion whether misconduct had been proved or not. The award of the Labour Court is set aside and the matter is remitted before the Labour Court for fresh consideration in the light of the observations made above...”

9. After remand of the case, learned Labour Court allowed an opportunity to the management to lead evidence in proof of alleged misconduct of the workman and the management examined a witness besides relying upon certain documents. However, the learned Labour Court found that the evidence so brought on record by the management was repetition of the earlier evidence and no new fact was brought-forth and, accordingly, vide award dated December 11, 2009, held the workman entitled for reinstatement with continuity of service and 30% back wages.

10. To lay a challenge to award dated December 11, 2009 management brought Civil Writ Petition No. 18626 of 2010. While Civil Writ Petition No. 18626 of 2010 was still pending, the workman preferred Civil Writ Petition No. 13900 of 2012 seeking quashing of the impugned award to the extent it denies full back wages to him. Learned Single Judge

has dismissed the writ petition brought by the workman vide order dated July 25, 2012 on the ground of delay and laches as it was filed after more than two years and eight months of passing of the impugned award.

11. Order dated July 25, 2012 is under challenge in Letters Patent Appeal No. 886 of 2013 brought by the workman under Clause X of the Letters Patent.

12. We have heard learned counsel for the parties besides examining the record of the case.

Submissions of the parties:

13. It is argued on behalf of the workman that writ petition preferred by the management to assail the impugned was still pending when the workman approached this Court and that being so the learned Single judge, instead of dismissing the writ petition of the workman, ought to have heard both the petitions together more so because by the delay neither the workman was to derive any gain for himself nor was the management prejudiced in any manner. Reference on behalf of the workman has also been made to a Full Bench judgment of this Court in Parkash Chand Garg versus S.S. Grewal, 1974(2) ILR (P&H) 56 to contend that termination of services of the workman having been declared illegal, he is entitled to all the benefits, viz. reinstatement with continuity of service and full back wages.

14. On the contrary, on behalf of the management it has been argued that in the evidence adduced before the learned Labour Court, appellant's misconduct had been sufficiently proved and, as such, reference could not be answered in favour of the workman only because after remand the

management could not bring additional evidence before the learned Labour Court.

15. No other or further point has been urged on either side.

Dismissal of the writ petition for delay and laches:

16. Let's first examine the question whether dismissal of the writ petition of the workman on the ground of delay and laches is justified.

17. As has been held by a Division Bench of this Court in **Rattan Singh and others v. State of Haryana and others, 1995(1) Recent Services Judgments 533**, "Delay and laches are twin grounds evolved by the Courts for denying relief to a person who approaches it after a lapse of considerable time for issue of a writ under Article 226 of the Constitution of India. The rule that the Court will not give relief to a person who has filed a petition after a lapse of long time is a rule evolved by the Courts. It is not a legislative instrument like the Limitation Act which prevents the Courts from granting relief in a given case. Rather, it is a rule of self-imposed limitation innovated by the Courts for not issuing orders which would unsettle the settled things or where a third party would be adversely affected due to the issue of a writ after a long delay. This rule which forms part of the Judge-made law cannot, however, be applied to each and every case for non-suiting a petitioner irrespective of the nature of claim and the circumstances which have contributed to the delay in filing of the petition. What we wish to emphasize is that no strait-jacket formula or wooden rule can be applied for declining or not declining the relief to a petitioner, who has approached the High Court for appropriate relief under Article 226 of the Constitution of India. In each and every case the Court shall have to

scrutinise the relevant facts for determining as to whether it will be appropriate to exercise jurisdiction in favour of a person who has approached it after a long lapse of time. In a given case Court may decline relief to a person only on the ground that he has approached it after a passage of few months counted from the date of accrual of cause of action. In another case it may give relief to a person who has filed a petition even after lapse of many years. Primary consideration, which must weigh in the mind of the Court while adjudicating upon an objection of delay and laches, is as to whether the petitioner has been grossly negligent in pursuing his remedy and whether the delay has resulted in a situation where rights of others have been settled and it would be inequitable to unsettle those rights".

18. It is not in dispute that against the award dated December 11, 2009, the writ petition was filed in the month of July, 2012 but it is equally true that a writ petition challenging the same award at the instance of the management was pending adjudication when writ petition of the workman came up for hearing and by delaying institution of the writ petition neither any benefit was derived by the workman nor any prejudice was caused to the management. Also, the delay was neither intentional nor deliberate nor willful. In any case, in the writ petition filed by the management sustainability of the impugned award, including entitlement of the workman to back wages, was to be examined which would have included examination of grievance of the workman as regards denial of full back wages to him. Still further, the Courts are respected for dispensation of justice and not for shutting the doors of temple of justice upon the poor litigants on technical

grounds. We, therefore, strongly feel that the workman ought to be heard on merits alongwith the connected writ petition.

Reinstatement and back wages:

19. It shall stand repetition that vide award dated August 29, 2002 enquiry held by the management was held to be unfair and reinstatement of the workman was ordered by the learned Labour Court and when this award was challenged by the management vide Civil Writ Petition No. 17131 of 2003, this Court, vide order dated August 24, 2009, set it aside and remitted the case back to the learned Labour Court with a direction '*to examine the evidence tendered before it and proceed to pass an order after considering the quality of evidence and coming to a conclusion whether misconduct had been proved or not*'. As the evidence available on record was found to be lacking on this point, learned Labour Court allowed another opportunity to the management to bring evidence in proof of the alleged misconduct but the management failed to bring any such evidence. In such a situation, the learned Labour Court though was required to return a finding that the misconduct alleged against the workman could not be proved but it, instead, held the enquiry to be not proper. As the management has failed to prove misconduct of the workman even after grant of repeated opportunities, we deem it proper not to remand the case back to the learned Labour Court and are constrained to hold that the management has failed to prove misconduct of the workman before the learned Labour Court. Natural consequence of such a finding is reinstatement of the workman because once the termination of service of an employee is held to be illegal, the relief of reinstatement is ordinarily available to the workman. But the relief of

reinstatement with full back-wages need not be granted automatically in every case where the Labour Court/Industrial Tribunal records the finding that the termination of services of a workman was in violation of the provisions of the Industrial Disputes Act, 1947. For this purpose, several factors, like the manner and method of selection; nature of appointment--ad hoc, daily-wage, temporary or permanent etc., period for which the workman had worked and the delay in raising industrial dispute, are required to be taken into consideration.

20. On this aspect, in **General Manager, Haryana Roadways v. Rudhan Singh, 2005(3) SCT 559 : (2005)5 SCC 591**, a three-Judge Bench of the Hon'ble Supreme Court has observed thus :

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent character

cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

21. It needs to be noticed that immediately after termination of his services vide order dated January 06, 1994, the workman approached appellate authority and on dismissal of his appeal vide order dated June 20, 1995 he approached the Labour-cum-Conciliation Officer and ultimately, reference was made by the Appropriate Government to the learned Labour Court in the year 1997 which came to be answered only in the year 2009, i.e. after more than eleven years. During the interregnum the workman remained without job and, at the same time, the management was deprived of his services. Therefore, while affirming the finding of the learned Labour Court as regards reinstatement of the workman in service, we hold the workman entitled to 50% back wages.

22. In view of the above, C.W.P. No.18626 of 2010 is dismissed, order dated July 25, 2012 is set aside and L.P.A No.886 of 2013 is partly allowed by modifying the award of the learned Labour Court holding that back wages payable to the workman are enhanced to 50%.

23. In the peculiar facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 23 , 2015
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