

IN THE PUNJAB & HARYANA HIGH COURT, AT CHANDIGARH

Date of Decision: September 02, 2015

Letters Patent Appeal No. 939 of 2013

M/s. O.K. Play India Limited

---Appellant

Versus

Raj Kumar and another

---Respondents

Letters Patent Appeal No. 940 of 2013

M/s. O.K. Play India Limited

---Appellant

Versus

Subhash Rahi and another

---Respondents

Letters Patent Appeal No. 941 of 2013

M/s. O.K. Play India Limited

---Appellant

Versus

Subhash Rahi and another

---Respondents

Letters Patent Appeal No. 942 of 2013

M/s. O.K. Play India Limited

---Appellant

Versus

Raj Kumar and another

---Respondents

Letters Patent Appeal No. 943 of 2013

M/s. O.K. Play India Limited

---Appellant

Versus

Lallu Ram and another

---Respondents

Letters Patent Appeal No. 944 of 2013

M/s. O.K. Play India Limited

---Appellant

Versus

Lallu Ram and another

---Respondents

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

Present: Shri Akshay Bhan, Senior Advocate, with Shri Amarjeet Singh,
Advocate, for the appellant.

Shri Rahul Sharma, Advocate, for the respondents.

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.

This judgment, being passed in Letters Patent Appeal No. 939 of 2013, shall dispose of, in addition to this appeal, Letters Patent Appeal Nos. 940, 941, 942, 943 & 944 of 2013 also, as all these appeals brought by M/s. O.K. Play India Limited (earlier known as M/s. Aquapure Containers Limited) (here-in-after referred to as ‘the Management’), involve common questions of fact and law and have arisen from a common judgment dated February 13, 2013 passed by the learned Single Judge.

02. Before setting out to examine sustainability of the impugned

order let us have a voyage across the conspectus of events leading to filing of the instant intra court appeals under Clause X of the Letters Patent.

03. Respondents Raj Kumar, Subhash Rahi and Lallu Ram (here-in-after referred to as the 'Workmen') joined duties with the Management and their services were terminated/dispensed with as per details given below:

Sr. No.	Name	Date of joining	Post to which appointed	Date of termination of service
01.	Raj Kumar	01.10.1990	Operator	18.06.1997
02.	Subhash Rahi	01.05.1995	Operator	18.06.1997
03.	Lallu Ram	02.05.1992	Painter	20.06.1997

04. On the basis of notices of demand served by the workmen on the Management, Reference Nos. 247, 248 and 243 of 1998 were made to Industrial Tribunal-cum-Labour Court, Gurgaon (here-in-after referred to as 'the Tribunal').

04. In the written replies the Management came out with a plea that services of the workmen were not terminated/dispensed with, rather they absented themselves and had, thereby, abandoned their respective jobs of their own.

05. Learned Tribunal, after allowing the parties to lead evidence, afforded them an opportunity of hearing and on analysis of the evidence came to a conclusion that the workmen were regular employees of the Management and their services were terminated/dispensed with without giving them an opportunity to show cause, without holding an enquiry and in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act'). Keeping in view the nature of the posts held and length of service of the workmen, as also the long span of

time that elapsed during adjudication of the matters, the learned Tribunal, instead of ordering reinstatement of the workmen, directed, vide Awards dated March 12, 2010, payment of compensation to them amounting to Rs. 45,000.00; Rs. 20,000.00 and Rs. 35,000.00, respectively.

06. Awards dated March 12, 2010 were challenged by the Workmen and the Management by way of Civil Writ Petition Nos. 16559 of 2010, 16611 of 2010, 16579 of 2010, 8744 of 2011, 8750 of 2011 and 8821 of 2011 wherein the learned Single Judge, vide judgment dated February 13, 2013, has set aside the Awards passed by the Tribunal and has directed reinstatement of the Workmen with all consequential benefits, including full back wages and continuity of service.

07. We have heard learned counsel for the parties.

08. On behalf of the Management it has been strenuously argued that it has been fully established on record that services of the Workmen were not terminated, rather they abandoned their jobs of their own and did not join their duties despite repeated reminders issued by the Management. Therefore, termination of services of the workmen does not fall within the definition of “Retrenchment” within the meaning of Section 2(oo) of the Act and, as such, provisions of Section 25F of the Act are not attracted. However, this aspect has been overlooked by the learned Single Judge. It has also been argued that even in the event of ordering reinstatement of the Workmen full back wages could not be awarded to them as they did not work during this period.

09. Learned counsel appearing for the Workmen has, however, defended the impugned judgment.

10. Learned Single Judge concurred with the findings of the Labour Court that it is not a case of abandonment of services by the Workmen, rather it is a case where their services have been illegally terminated/dispensed with in violation of the mandatory provisions of Section 25F of the Act, and has held Workmen to be entitled to reinstatement in service with all the consequential benefit, including continuity of service and full back wages.

11. Concededly, the Workmen who were regular (or say confirmed) employees, had absented from their duties and their names were struck off from the rolls of the Management without holding a domestic enquiry into the alleged misconduct and without even serving upon them notices to show cause proposing termination of their services. Provisions of Section 25F of the Act were also not complied with in so far, it is not in dispute that at the time of or after passing of the orders of termination, no amount by way of salary or otherwise has been paid to them.

12. By absenting from their duties, the Workmen might have committed misconduct because when an employee absents from duty unauthorizedly, he, indisputably, commits misconduct. A domestic inquiry is, therefore, required to be initiated. The order of termination/discharge is not a substitute for an order of punishment. If an employee is to be dismissed from services on the ground that he had committed misconduct, he is entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, the Workmen could have shown that there were compelling reasons for their not reporting on duty. Even a minor punishment could have been granted. The Management, however, precipitated the situation by passing a hasty order of termination of their

services by striking off their names from its rolls. Thus, finding of the Labour Court, as affirmed by the learned Single Judge, that services of the Workmen were illegally terminated, does not call for interference.

13. 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 a finding that the termination of services of a workman was in violation of the provisions of the Act. 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.

14. 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."

15. It needs to be noticed that immediately after termination of their services in the month of June, 1997, the Workmen approached the Labour-cum-Conciliation Officer before whom the Management agreed to take them back in service but did not honour its undertaking. This forced the Workmen to approach the Labour-cum-Conciliation Officer again and ultimately references were made by the Appropriate Government to the Labour Court in the year 1998 which came to be answered only in the year 2010, i.e., after about twelve years. Finding of the Labour Court that throughout the period commencing from termination of their services, the workmen remained without work or say were not gainfully employed has remained unchallenged. At the same time the Management also has not availed of their services during the afore-stated period. In the situation, award of full back wages in favour of the Workmen seems to be unreasonable. We, therefore, strongly feel that in the peculiar facts and circumstances of the case, award of 25% back wages to the Workmen shall be just and proper.

16. As a consequence of what has been said and discussed in the foregoing part of this judgment, direction of the learned Single Judge directing reinstatement of the Workmen in service with all the consequential

benefit, including continuity of service deserves to be and is, hereby, upheld with the modification that they shall be entitled to back wages at the rate of 25% of the salary which they were drawing at the time of termination of their services.

17. With the above modification in the order of the learned Single Judge, the appeals fail and are dismissed.

18. 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 02, 2015
adhikari

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

LPA No.943 of 2013

Decided on: September 02, 2015

M/s. O.K. Play India Limited

---Appellant

Versus

Lallu Ram and another

---Respondents

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

Present: Shri Akshay Bhan, Senior Advocate, with Shri Amarjeet Singh,
Advocate, for the appellant.

Shri Rahul Sharma, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

For orders, see order of even date passed in LPA No.939 of 2013

– M/s. O.K. Play India Limited Versus Lallu Ram and another.

[Satish Kumar Mittal]
Judge

[Mahavir S. Chauhan]
Judge

September 02, 2015
adhikari

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

LPA No.940 of 2013

Decided on: September 02, 2015

M/s. O.K. Play India Limited

---Appellant

Versus

Subhash Rahi and another

---Respondents

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

Present: Shri Akshay Bhan, Senior Advocate, with Shri Amarjeet Singh,
Advocate, for the appellant.

Shri Rahul Sharma, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

For orders, see order of even date passed in LPA No.939 of 2013

– M/s. O.K. Play India Limited Versus Lallu Ram and another.

[Satish Kumar Mittal]
Judge

[Mahavir S. Chauhan]
Judge

September 02, 2015
adhikari

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

LPA No.944 of 2013

Decided on: September 02, 2015

M/s. O.K. Play India Limited

---Appellant

Versus

Lallu Ram and another

---Respondents

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

Present: Shri Akshay Bhan, Senior Advocate, with Shri Amarjeet Singh,
Advocate, for the appellant.

Shri Rahul Sharma, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

For orders, see order of even date passed in LPA No.939 of 2013

– M/s. O.K. Play India Limited Versus Lallu Ram and another.

[Satish Kumar Mittal]
Judge

[Mahavir S. Chauhan]
Judge

September 02, 2015
adhikari

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

LPA No.941 of 2013

Decided on: September 02, 2015

M/s. O.K. Play India Limited

---Appellant

Versus

Subhash Rahi and another

---Respondents

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

Present: Shri Akshay Bhan, Senior Advocate, with Shri Amarjeet Singh,
Advocate, for the appellant.

Shri Rahul Sharma, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

For orders, see order of even date passed in LPA No.939 of 2013

– M/s. O.K. Play India Limited Versus Lallu Ram and another.

[Satish Kumar Mittal]
Judge

[Mahavir S. Chauhan]
Judge

September 02, 2015
adhikari

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

LPA No.940 of 2013

Decided on: September 02, 2015

M/s. O.K. Play India Limited

---Appellant

Versus

Subhash Rahi and another

---Respondents

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

Present: Shri Akshay Bhan, Senior Advocate, with Shri Amarjeet Singh,
Advocate, for the appellant.

Shri Rahul Sharma, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

For orders, see order of even date passed in LPA No.939 of 2013

– M/s. O.K. Play India Limited Versus Lallu Ram and another.

[Satish Kumar Mittal]
Judge

[Mahavir S. Chauhan]
Judge

September 02, 2015
adhikari

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

LPA No.942 of 2013

Decided on: September 02, 2015

M/s. O.K. Play India Limited

---Appellant

Versus

Raj Kumar and another

---Respondents

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

Present: Shri Akshay Bhan, Senior Advocate, with Shri Amarjeet Singh,
Advocate, for the appellant.

Shri Rahul Sharma, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

For orders, see order of even date passed in LPA No.939 of 2013

– M/s. O.K. Play India Limited Versus Lallu Ram and another.

**[Satish Kumar Mittal]
Judge**

**[Mahavir S. Chauhan]
Judge**

**September 02, 2015
adhikari**