

LPA No. 1313 of 2015(O&M)

Date of Decision: 29.10.2015

Smt. Kishan Wati

---Appellant

versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad
and another**

---Respondents

**Coram: Hon'ble Mr. Justice Rajive Bhalla
Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr.Anil Shukla, Advocate
for the appellant**

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

Rajive Bhalla, J.

CM No.2796-LPA of 2015

Prayer in this application is to condone delay of 13 days in re-filing the appeal.

We have heard counsel for the appellant and appraised averments in the application.

For reasons stated in the application and arguments addressed, the application is allowed and delay of 13 days in re-filing the appeal is condoned.

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The appellant challenges order dated 1.4.2015 on the plea that though her reinstatement had been ordered but she has been denied back wages.

Counsel for the appellant submits by placing reliance on a judgment of Hon'ble the Supreme Court of India in **Jasmer Singh vs. State of Haryana and another** Civil Appeal No. 346 of 2015 dated 13.1.2015 that a necessary consequence of an illegal order of termination is reinstatement with back wages. The onus to prove that the workman was gainfully employed lies upon the management. The management had not adduced any evidence to prove that the appellant was gainfully employed. The impugned order declining back wages on the ground that the appellant has not pleaded that she was not gainfully employed is, therefore, incorrect and may be set aside.

We have heard counsel for the appellant. The appellant has been ordered to be reinstated but has been denied back wages for want of an averment in her application, before the Industrial Tribunal, that during the period of her termination, she was not gainfully employed. The appellant is unable to point out factual error in this finding. The workman having been reinstated should have been satisfied with her reinstatement. Consequently, finding no merit, the appeal is dismissed.

(Rajive Bhalla)
Judge

(Rekha Mittal)
Judge

29.10.2015
PARAMJIT