

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

LPA No. 603 of 2015

DATE OF DECISION : 20.11.2015

Rameshwar Dayal Saraff, Public Girls College, Rewari

.... APPELLANT

Versus

Ram Niwas and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. Sat Narain Yadav, Advocate, for the appellant.
Mr. Narender Yadav, Advocate, for respondent No.1.

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SATISH KUMAR MITTAL, J. (Oral)

The Management has filed this intra-court appeal under Clause X of the Letters Patent against the order dated 29.09.2014 passed by the learned Single Judge, whereby the writ petition (CWP No. 17474 of 2011) filed by the workman, namely Ram Niwas (respondent No.1 herein) was partly allowed and the award dated 11.02.2009 (Annexure P-2) passed by the Presiding Officer-cum-Labour Court-I, Gurgaon, reinstating the respondent – workman in service with back wages to the extent of 30%, was modified to the extent that the back wages was enhanced to 50%.

We have heard learned counsel for the parties and have gone through the impugned order as well as the award passed by the Labour Court.

In this case, the Labour Court after recording a finding, on the

basis of evidence led by both the parties, that services of the respondent – workman were illegally terminated on 12.08.1998 in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), ordered for reinstatement of the respondent – workman with 30% back wages from the date of termination of his services till 11.02.2009, the date of passing of the award by the Labour Court. The Management challenged the said award by filing CWP No. 10131 of 2009 on the ground that the Labour Court had recorded a wrong finding that services of the respondent – workman were illegally terminated in contravention with Section 25-F of the Act. The said writ petition was dismissed on 17.02.2010. Subsequently, the respondent - workman also challenged the said award by filing CWP No. 17474 of 2011. His writ petition was partly allowed to the extend, as indicated above.

Before the learned Single Judge, it was argued on behalf of the appellant – Management that since the award of the Labour Court was upheld by the learned Single Judge in the writ petition filed by the appellant – Management, in the subsequent writ petition filed by the respondent – workman, the same award could not have been modified enhancing the back wages from 30% to 50%. The learned Single Judge rejected the said argument and observed that during the course of arguments, learned counsel for the appellant – Management admitted that at the time of hearing of the earlier writ petition filed by the appellant – Management, issue with regard to the quantum of back wages was not raised by the respondent – workman

and, thus, was not dealt with. It was further observed that in the facts and circumstances of the case, there is no valid reason for denial of back wages, then this issue can be gone into. While considering the issue of grant of inadequate back wages, learned Single Judge observed that mere absence of specific assertion that the workman was not gainfully employed during the period he remained out of service ipso facto does not lead to deny him the back wages, particularly when the Management fails to prove during the course of proceedings before the Labour Court that the workman was gainfully employed during the period he remained out of service. After considering all these aspects, the learned Single Judge modified the award of the Labour Court and enhanced the back wages from 30% to 50%.

We are also of the opinion that mere dismissal of the writ petition filed by the appellant – Management challenging the award of the Labour Court will not deprive the right of the respondent – workman to challenge the same award, if he is aggrieved by a part of the award. We do not find any illegality or perversity or lack of jurisdiction in the impugned order passed by the learned Single Judge.

No merit. Dismissed.

**(SATISH KUMAR MITTAL)
JUDGE**

November 20, 2015
ndj

**(SHEKHER DHAWAN)
JUDGE**