

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

Civil Revision No.4861 of 2016 (O&M)

Date of Decision: 04.11.2016

**The State of Punjab through the Secretary to Govt. Punjab
Transport Department, Chandigarh**

.....Petitioner

Vs

Amarjit Singh

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. P.S. Mattewal, Addl. A.G., Punjab
for the petitioner.

Mr. Arun Singla, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 17.05.2016 (Annexure P-1) passed by Civil Judge (Jr. Divn.) Chandigarh vide which the petitioner/department was directed to make good the deficit payments to the decree-holder.

[2]. Brief facts as gathered from the record are that the respondent was appointed as Conductor on temporary basis in the petitioner-Department. The service of the respondent was terminated on 01.06.1977. Respondent filed a suit for declaration, which was decreed on 10.02.1983. Order dated

01.06.1977 passed by General Manager, Punjab Roadways, Chandigarh, dismissing the services of the respondent was held to be illegal. Respondent was held to be continued in service with all benefits of service including full pay and allowances with costs.

[3]. Petitioner-Department filed appeal against the aforesaid judgment and decree before the lower Appellate Court and the same was accepted on 17.12.1983. Feeling aggrieved against the judgment and decree of the lower Appellate Court, respondent filed a Regular Second Appeal before this Court. The judgment and decree of the lower Appellate Court was set aside vide judgment and decree dated 15.01.2010 passed by this Court and the decree of the trial Court was ordered to be restored.

[4]. Thereafter execution was filed by the respondent/decreed-holder claiming backwages for the entire period i.e. 01.06.1977 to the date of superannuation. Respondent claimed that since the order of termination of his services was held to be illegal, therefore, he was entitled to be reinstated with continuity of service with full backwages. Grant of backwages is the normal rule unless and until the employee is proved to be in gainful employment during the period of

termination of his services.

[5]. Learned State counsel for the petitioner vehemently contended that the respondent was only a temporary employee at the time of termination of his services. He was not regularised, therefore, even after setting aside the order of termination, Management could have removed him on account of further misconduct. Considerations in the case of temporary and regular employees are altogether different.

[6]. Learned State counsel relied upon **Hari Nandan Prasad and another vs. Employer I/R to Management of Food Corporation of India and another, (2014) 7 SCC 190** to contend that the respondent had worked on temporary basis for barely small period of time and he was out of service since the year 1977. Huge time period had elapsed since his termination and the respondent had already been superannuated by deeming fiction, therefore, it would be highly improbable to reinstate the respondent with full backwages.

[7]. Learned State counsel vehemently contended that the respondent was not entitled to full backwages as a matter of right. The earlier view was that if, the termination of an employee was found to be illegal, the relief of reinstatement with full backwages would ordinarily follow. However, in the recent

past the legal position has been changed. The relief by way of reinstatement with full backwages is not automatic and may be wholly inappropriate in a given fact situation, even though the termination of an employee is not in contravention of prescribed procedure. The Courts have authored that compensation instead of reinstatement has been held to meet the ends of justice.

[8]. Learned State counsel further submitted that in **BSNL vs. Bhurumal, 2014 (7) SCC 177** the legal position has been summed up in the following manner:-

“23. “It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. *The reasons for denying the relief of reinstatement*

in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

25. *We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the*

reasons stated to be in writing, such a relief can be denied”.

[9]. Learned State counsel further relied upon **Haryana State Electronics Development Corpn. Ltd., vs. Mamni, (2006) 9 SCC 434** and submitted that instead of reinstatement with full backwages, a lumpsum amount is required to be paid to the respondent by way of compensation. Since the respondent has not pleaded that he was not gainfully employed during the interregnum period, therefore, the respondent has not discharged his original onus.

[10]. On the other hand, learned counsel for the respondent submitted that in view of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, 2014(1) RSJ 266** the propositions have been culled out to meet the exigencies of the present time. It was held that in case of wrong termination of service, reinstatement with continuity of service and backwages is the normal rule. The said rule is however subject to the rider that while deciding the issue of backwages, the Authority/Court may take into consideration the factors like length of service, nature of misconduct and other factors like financial condition of the employer. The workman is required to plead and state before the Authority/Court at first instance that he was not gainfully employed during the interregnum period in

which he was remained away from service. If, the employer wants to avoid payment of full backwages, then the employer has to plead and lead cogent evidence to prove that the workman was gainfully employed and was getting wages equal to the wages, which he was drawing prior to termination of his service. The burden of proving of this particular fact was upon the person, who makes the positive averment about its existence.

[11]. Learned counsel for the respondent further stated that since the employer wishes to withhold the amount of backwages, therefore, it was legally incumbent upon the employer to prove that the workman was gainfully employed during the intervening period. The ratio applied in the aforementioned case was to the effect that the employer was in advantageous position viz-a-viz. the workman and he can prolong the agony of the workman by involving him in legal battle for a considerable time.

[12]. By referring to **Raj Kumar Dixit vs. M/s Vijay Kumar Gauri Shanker, Kanpur Nagar, 2015(3) SCT 27**, learned counsel for the respondent submitted that once the order of termination was held to be bad in law, the award of full backwages should follow from the date of termination till the

date of passing of the award, unless the employer proves that the workman was gainfully employed during the period of termination. In the absence of any evidence led by the employer, the award of backwages cannot be diluted.

[13]. Learned counsel for the respondent further submitted that the respondent was removed from the service because of no fault on his part. Backwages cannot be denied on the ground that respondent had not worked for the period when he was illegally kept out of service. Grant of full backwages in such an eventuality for the period during which he was kept out of service is the normal rule. Reference was made to **Shiv Nandan Mahto vs. State of Bihar and Ors., 2014(1) SCT 47.**

[14]. I have considered the submissions made at the bar.

[15]. The civil suit of the respondent was decreed on 10.02.1983 and the said judgment and decree was upheld by this Court in Regular Second Appeal. Pursuant to the judgment and decree of the trial Court, the order was implemented by the General Manager, Punjab Roadways, Chandigarh by passing the order dated 21.03.2016 and benefit of Ex-Conductor as temporary employee was given to the respondent. Service benefits from 01.06.1977 till the date of decision i.e. 10.02.1983 was ordered to be given.

[16]. The precedents cited above are in respect of grant of compensation in the context where reinstatement was not ordered in the main channel of litigation. In the instant case, decree was passed on 10.02.1983 by the trial Court which was reversed by the lower Appellate Court. However Regular Second Appeal filed by the respondent was accepted and the judgment and decree of the trial Court dated 10.02.1983 was ordered to be restored. This is the differentia which makes the present case distinct from the ratio applied in **Hari Nandan Prasad and another; BSNL** and **Haryana State Electronics Development Corpn. Ltd.'s** cases (supra).

[17]. The order of reinstatement was even partly implemented as per order dated 21.03.2016 (Annexure P-3) passed by the General Manager. The ratio of **Deepali Gundu Surwase's** case (supra) fully apply to the facts of the present case. The petitioner-Department has not led any evidence to show that the respondent was gainfully employed during the interregnum period, therefore, the objection raised by the petitioner in execution does not hold good. The executing Court is not supposed to go beyond the decree passed by the competent Court.

[18]. In view of aforesaid, I uphold the order dated

17.05.2016 passed by the Civil Judge (Jr. Divn.) Chandigarh.

This revision petition is accordingly dismissed.

November 04, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No