

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13548 of 1996

Date of Decision: 16.02.2017

Kuldeep Singh

... Petitioner

Versus

Presiding Officer, Labour Court,
Panipat and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Mandeep Singh, Advocate,
for the petitioner.

Mr. S.P. Singh, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. Notice of motion was issued in this petition on September 20, 1996 on the contention of the petitioner that was entitled to the grant of back wages, at least from the date of demand notice. Efforts to compromise the matter before the Lok Adalat have failed on October 21, 2016 and the case has been returned for decision on merits. The brief facts of the case are as follows:-

2. The petitioner was appointed as a Secretary in the Karnal Central Cooperative Bank Limited, Karnal on February 07, 1985. His services were terminated on February 20, 1986.

3. Aggrieved by the termination, the petitioner filed CWP No.9567 of 1988. The respondent-Bank raised the objection that the petitioner had not availed of his alternative remedy provided under the

Industrial Disputes Act, 1947 ("1947 Act").before the Labour Court. The writ petition was admitted. On September 23, 1992 when the petition came on for final disposal the petition was withdrawn to approach the Labour Court to avail alternative remedy.

4. Having withdrawn the petition to approach the Labour Court in resignation to the preliminary objection, the petitioner served a demand notice on the management in October 1992 by raising an industrial dispute. The matter was referred to the Tribunal and ultimately the Labour Court vide award dated May 10, 1995 published in the Gazette on March 10, 1996 reinstated the petitioner to service by setting aside the termination order as illegal but declined payment of back wages. The award was implemented and the petitioner was allowed to join the Bank on May 30, 1996. Soon thereafter, he was issued a regular appointment letter on July 20, 1996. This is the end of the first chapter of the litigation and the beginning of the second

5. The petitioner has approached this Court challenging the award to the extent it denies back wages claiming withholding of money to be illegal, unjust, unfair and unconstitutional besides being opposed in arbitrary exercise of power which made the award liable to be set aside. Indisputably, the petitioner had prosecuted his remedy before the High Court from 1988 to September 23, 1992 when he withdrew the petition to raise an industrial dispute in October 1992.

6. Mr. Malik argues that there was no reasoned decision at all in the labour court to deny the back wages on delay since parties were in litigation during the period except introducing an irrelevant consideration of

delay caused by time spent bona fide pursuing the writ petition in this Court while challenging the termination. Before the Labour Court, the Bank took a number of preliminary objections. To wit, the workman was estopped from filing the claim statement by his own act and conduct; the present claim statement was bad on account of delay and laches and termination of services does not amount to retrenchment and, therefore, compliances of the law in the Act were not obligatory.

7. Oral and documentary evidence was produced by both the parties for and against and the documents were exhibited on record. The court found that the termination had been brought about without adhering to the provisions under Section 25-F of the 1947 Act while terminating services. The management asserted that the petitioner was appointed on ad hoc basis for 89 days. Each time a fresh appointment letter was given to the workman for a period of 89 days. After expiry of the contractual period his services automatically stood terminated. These appointment letters were exhibited on record as Exbs.M.2, M.6 and M.10. Conjunctively, the total period amounting to more than 240 days was spent earning and thus the test of continuous service was satisfied and the statement of the management witness Naresh Kumar was falsified from the documentary evidence placed on record. The Labour Court was of opinion on the basis of well established law that repeated appointments for a specific period after giving breaks is unfair labour practice and in such circumstances, the services should be deemed to be continuous. To reach this conclusion, the Labour Court relied on several judgments of this Court to which reference was made but is not necessary to add to this order since the point is well settled. After

appreciating the evidence on record the Labour Court held that the procedure laid down under Section 25-F was violated since neither notice, nor one month's pay in lieu of notice or retrenchment compensation was paid to the him at the time of termination of services. As a result, the termination was held illegal and unjust.

8. On the plea of delay and laches taken as an objection in the written statement that the reference was belated and was bad on account of delay and laches was an issue which was not framed of claimed by the management. The two issues framed were as per terms of reference and relief. Yet the management argued that the reference was belated and consequently, the workman is not entitled to any relief. In support of its contention, the management relied on Punjab State Electricity Board, Patiala v. Presiding Officer, Labour Court, Bhatinda and another, 1991 (2) RSJ 560. Even a suit could be brought within three years of the cause of action which accrued on February 20, 1986 when the services of the petitioner were wrongfully terminated.

9. The management further relied on the ruling in Karnal Central Cooperative Bank Ltd. v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and others, 1994 (2) RSJ 132 for the point that the Labour Court would be justified in referring back the dispute to the State Government on the ground of delay and laches and a reference after 10 years of termination is rendered bad. However, if the appropriate Government opts to refer a dispute which is belated, the Labour Court has no jurisdiction to refer back the reference on the ground of being belated as it can always mould the relief and factor the delay. The Presiding Officer,

Labour Court, Panipat also applied the law in Patiala Central Cooperative Bank Limited, Patiala v. Presiding Officer, Labour Court, Patiala and another, 1992 (2) RSJ 726 where this Court held, that no doubt it is desirable that there should not be undue delay in making a reference by the appropriate government but delay and laches cannot alone be made ground for striking down a reference. The making of reference is administrative action and the Government is the final authority for forming that opinion. The Labour Court would not refuse to entertain the reference on account of delay. On the other hand, it is duty bound to decide the reference on merits. Having dealt with the evidence, the Labour Court concluded that the workman is entitled to reinstatement with continuity of service. Back wages have been declined in two sentences while signing off the impugned part award which reads in sum total as follows:-

“As the reference has been made after the period of 6 years, the reference is highly belated. So he is not entitled to back wages.”

10. There is apparently no discussion on the subject matter of back wages in the award leaving it inadequate and bereft of reasoning.

11. In my view, the Labour Court could not have held the reference to be “highly belated” and that too by six years without entering into a debate on the effect of the duration of the litigation in the writ petition filed by the workman in this Court legitimately and diligently pursuing remedy on advice received in the hope of obtaining relief of reinstatement. It was the objection of the Bank on alternative remedy that prevailed compelling the petitioner to withdraw the petition and seek liberty to approach the Labour Court. Therefore, it does not lie in the mouth of the respondent Bank

to urge that the reference was belated and for the Labour Court to have upheld that objection. The Bank was an authority within the meaning of Article 226 of the Constitution of India and, therefore, a writ lay against the respondent-Bank. The case could have been decided on merits on the basis of common law without resorting to the prescriptions in the 1947 Act but that was not to be, when after admission of the case by a Division Bench the matter was withdrawn before the learned Single Judge. The petitioner was a Secretary of the Bank and held a position of authority with supervisory duties and exercising some of the managerial functions, though there is no positive evidence on record to confirm any opinion on this but the question occurs to the mind while dealing with relief of back wages.

12. Ordinarily, an illegal termination is visited with reinstatement and back wages. See Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., (1979) 2 SCC 80, Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192, Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana), 2010 (3) SLR 663, Devinder Singh vs. Municipal Council, Sanaur, (2011) 6 SCC 584 and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324, Jasmer Singh v. State of Haryana, (2015) 4 SCC 458 and Tapash Kumar Paul vs. BSNL and another, 2014 (3) SCT 106 (SC) and the full bench judgment of this court handed down in Hari Palace v. Presiding Officer, Labour Court, Ambala, 1979 (2) ILR (Punjab) 243 holding that back wages will follow illegal termination unless there are reasons necessitating departure.

13. Moreover, the petitioner cannot be said not to have pursued his

remedy diligently while presenting the writ petition which was admitted to regular hearing by the Division Bench of this Court on the short point as to whether the petitioning workman is entitled to full back wages or not. Then the petitioner would have the benefit of Section 14 of the Limitation Act, 1963. It is another matter had not the Bank raised an objection as to alternative remedy to prolong relief and the writ was forced to be withdrawn by ambush. Then perhaps that could have been the end of the matter just as it ended in the labour court as far as reinstatement is concerned. The law indicates that a person cannot approbate and reprobate at the same time. I have failed to see that the reference was “highly belated” as held by the Labour Court in one line. That part of the award is not judicial reasoning to sustain financial loss. If it is exercise of discretion, then there is no back up evidence of assigning reasons for denial except mere *ipse dixit*.

14. Having come to the conclusion that the termination was illegal, then the natural consequences should have followed and the petitioner held entitled to the back wages. The reason of delay of six years was not germane to the consideration nor was relevant in moulding relief and the same is held to be untenable. The Labour Court failed to apply its mind and address itself to this important issue while declining the right to payment of back wages when continuity was granted in the wake of reinstatement. There could be no doubt that the termination took place on February 20, 1986 and legal remedy was sought for the first time on October 28, 1988 when the writ was filed. It would be seem to me unjustified to give the benefit of back wages from February 20, 1986 to October 28, 1988 because the Bank cannot be blamed on this score. Nevertheless, it appears to me unjustified to deny back

wages altogether from October 28, 1988 onwards when the petitioner was pursuing remedy against the termination order in the High Court in a bona fide manner. There was hardly any gap between the date of withdrawal of the petition on September 23, 1992 and raising the industrial dispute in October 1992 which dispute was referred to the Labour Court.

15. There is also no question of back wages running from May 30, 1996 when the petitioner was reinstated to service and allowed to join service of the Bank. The award is dated May 10, 1995 and it was endorsed on December 15, 1995 and the intervening period is also not to be discounted to deprive the petitioner of the arrears of salary for the period. The delays in endorsing the award and publication of the notification under Section 17 (1) of the Act in the Government Gazette was considerable and the award could only be published on March 10, 1996 to make it enforceable and thus the petitioner is held entitled to salary for the period a no fault can be attributed to the petitioner.

16. The period in question for consideration of payment of back wages hones down to October 28, 1988 to May 29, 1996 i.e. one day before the petitioner was allowed to join service. This period stands covered with the continuity of service granted by the Labour Court.

17. I agree with Mr. Malik and disagree with Mr. S.P. Singh, learned counsel appearing for the Bank on the issue of back wages. The Labour Court has failed to record proper reasons for denial of back wages and, therefore, the award is not sustainable to the extent it denies back wages altogether and that too for the wrong reason of delay. The labour court skipped over the period spent in the High Court for no fault of the

petitioner. The Bank could have taken its chances for a decision from this Court on merits and if it won leave the petitioner to his remedy before the Letters Paten Bench and thereafter the Supreme Court. The Bank must pay the price of the victory of its preliminary objection as the cause of action and right to sue continued. But victory can become defeat sometimes and in the ultimate analysis and the euphoria come to an end.

18. Before reaching the final conclusion I must say a few words on CWP No.10776 of 1996 titled *Balbir Singh v. Presiding Officer, LC, Panipat and others* relied upon by the Bank. Balbir Singh Kandhol's services like the petitioner were also terminated. That writ petition was also admitted on the point of back wages. Mr. R.K. Malik, learned Senior counsel was counsel for Balbir Singh Kandhol. In that case, Mr. Malik, on instructions from his client withdrew the writ petition when a decision of the Bank was conveyed to Balbir Singh Kandhol vide letter dated April 07, 2000 informing him that the representation of Balbir Singh Kandhol was accepted by the Board of Directors of the Bank in its meeting held on March 13, 2000 vide agenda item No.15 resolving that Balbir Singh Kandhol could be considered for benefit of continuity of service subject to the condition that he will firstly withdraw the case from the High Court and tender an affidavit to the effect that he shall not claim back wages. Balbir Singh Kandhol succumbed to this offer and was granted benefit of continuity of service. He lost out on back wages or a part thereof on his free will. It is, therefore, argued by the Bank that the present petitioner should also be given the same deal. The Bank did not press its preliminary objection on alternative remedy in that case.

19. The facts in that case were: Balbir Singh Kandhol was employed as a Clerk in the Bank on August 07, 1986 and his services were terminated in less than a year on June 24, 1987 without complying with Section 25-F of the 1947 Act. He filed CWP No.9745 of 1988 against his termination orders. The petition was admitted like Kuldeep Singh's case, the present petitioner. If Balbir Singh Kandhol failed to exercise his right and succumbed to the resolution then it does not follow *ipso facto* that the present petitioner should also be subjected to the same treatment. No resolution of the kind was passed in the case of the present petitioner and there is no estoppel against a counsel to act differently in different cases even when the dispute is similar. Counsel is bound by instructions of his client and acts in aid of them. The Bank should not have held two standards. I would, therefore, not pin down Mr. R.K. Malik, learned Senior counsel to the orders passed in CM No.7313 of 2000 in CWP No.10776 of 1996. The objection raised at the hearing by the counsel for the respondent without documents on record but produced during the hearing being the certified copy of the order dated May 04, 2000 and uncertified copy of Annex P-6 from the records of this Court is taken judicial notice of and is retained on record.

20. I do not think Balbir Singh's case ought to detain us any further. He was free to act according to his wishes. He filed an affidavit to this effect. The present petitioner has fought on regardless of consequences. The impugned award in denying back wages is unsustainable and deserves to be modified. The petitioner is held entitled to payment of back wages.

21. The question remaining to be considered is: what should be the

just and balanced quantum of back wages to be awarded, full or in part, by modification of the award. Looking to the totality of the circumstances presented in the case and in order to serve the ends of justice, I feel it would be adequate and justified compensation payable for illegal retrenchment to award 50% of the back wages counted for the period October 28, 1988 till the date of the award i.e. May 10, 1995. However, the petitioner is held entitled to full back wages from May 10, 1995 till May 30, 1996 i.e. the period between the award and the date of joining in implementation of the award which had attained finality.

22. For the foregoing reasons, the petition is partly allowed. The award stands modified as above. The amounts be determined and released in favour of the petitioner within three months from the date of receipt of the certified copy of the order, either from the Court or from the petitioner, whichever is earlier.

(RAJIV NARAIN RAINA)
JUDGE

16.02.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*