

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10910 of 1999

Date of Decision: 25.04.2017

Municipal Council Hissar

... Petitioner

Versus

Presiding Officer, Labour Court,
cum Industrial Tribunal, Hissar
and another

... Respondents

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

Present: Mr. Pawan Kumar Mutneja, Advocate,
for the petitioner.

Mr. Amit Aggarwal, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. The period of service spent with the municipality is far too brief to effectively consider an award of reinstatement to service even if all other industrial law ingredients are satisfied to declare the termination bad in law. The respondent was a Keyman with the erstwhile Municipal Committee, Hisar and worked in its offices from August 17, 1985 to April 17, 1986. There is no dispute that he completed 241 days in the twelve calendar months prior to termination as per the admission of the witness of the Committee. This was the first short stint or employment. But he did not raise an industrial dispute. He got a second spell of service in the Municipal Council, Hisar in 1988 - 1989 for a period of 136 days. The period 1988-1989 was significant in the history of this Court as it gave birth to litigation famously called the Piara Singh case in CWP 72 of 1988 spawning

thousands of cases where workman claimed regularisation of services in various departments based on Industrial Disputes Act rights achieved on completion of 240 days of service as daily wage, adhoc etc. employees. This wave ended in the Supreme Court in the famous case in State of Haryana and others v. Piara Singh and others, AIR 1992 SC 2130 in appeal from the judgment of the division bench in Piara Singh case. The State of Punjab was also party. Policies and schemes of regularisation were brought into existence. Suffice it to say that the present respondent workman joined the bandwagon and entered the arena of litigation by filing CWP No.1228 of 1989 claiming regularization of his services. Notice of motion was issued in the case and the matter was pending when finally an order was passed in 1993 disposing of the petition with liberty to the petitioner to approach the industrial adjudicator for settling rights.

2. Thereafter, and for the first time the workman raised an industrial dispute by serving a demand notice on the management. This demand notice led to the reference before the Presiding Officer, Labour Court, Hisar which has allowed the reference and granted reinstatement to service with 25% of the wages to the workman. It is against the award that the Municipal Council is in the instant writ petition represented by Mr. Mutneja.

3. I have heard the learned counsel for the parties.

4. The industrial rights flowing from the first spell of service have come to naught with the respondent-workman shying from raising an industrial dispute regarding termination on April 17, 1986.

5. The second spell of service falls between August 23, 1988 to May 01, 1989. This spell does not bring forth any industrial rights since the

length of service is less than 240 days and, therefore, the original claim itself in the writ petition bearing CWP No.1228 of 1989 was misplaced, the period of service being less than 240 days and thus industrial rights were premature and not legally enforceable except for purposes of Sections 25G & 25H of the Industrial Disputes Act, 1947 ("ID Act").

6. Accordingly, there has resulted considerable delay of seven years from the first spell and four years from the second spell in raising an industrial dispute under Section 2-A of the ID Act. From either measuring points the approach to remedy is not reasonable. There is no doubt that no period of limitation is prescribed in Section 10 of the ID Act, but still Courts have held that there should not be an inordinate delay in approaching Court in raising a dispute. See The Nedungadi Bank Ltd. vs. K.P. Madhavankutty and others; (2000) 2 SCC 455, Executive Engineer Vs. Shivalinga, (2002) 10 SCC 167 and State of Karnataka Vs. Ravi Kumar, (2009) 13 SCC 746.

7. The next question which arises is as to what is to be done about the period of litigation spent in the High Court. The workman may have been under a bona fide belief or was advised that he has a remedy through the Piara Singh cases and, therefore, the period should not be held against him as he was pursuing litigation till 1993. In this manner, one can say that the workman's rights may go back to April 17, 1986 i.e. to the first spell of service where from admittedly industrial rights had matured but practically too brief to award reinstatement. It is well settled that reinstatement is not automatic on even a declaration that provisions of Section 25F of the ID Act were not complied with and the workman can instead be compensated in

lieu of reinstatement. The period of service considered by the Supreme Court was about a year in Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh, [2013] 5 SCC 136 in which their Lordships of the Supreme Court found appropriate to award ₹50,000/- compensation to a daily wage employee. Nevertheless, monetary relief has to be constantly adjusted with the passing time and the rising price index and relief has to be tuned by the Court. In the Division Bench ruling in Municipal Council, Dina Nagar vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (1) RSJ 765 a broad rule has been evolved by the division bench recommending payment of compensation of ₹1 lakh to ₹1.25 lakhs for every year of service prior to retrenchment/termination. In *Dina Nagar* the Court dealt with the case involving Pump Operators and Clerks.

8. Keeping in view package in *Gitam Singh* and *Dina Nagar* cases I think the ends of justice would be served if an amount of ₹1 lakh is given to the workman as compensation in lieu of reinstatement.

9. I would order accordingly by modifying the award of the Labour Court dated May 20, 1998 (P-7). The amount be paid within three months from date of receipt of order from Court or from the petitioner, whichever is earlier, failing which the sum will earn interest @8.5% till realization.

(RAJIV NARAIN RAINA)
JUDGE

25.04.2017
manju/neeraj

Whether speaking/reasoned

Yes

Whether reportable

No