

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

Date of decision: 15.03.2017

CWP No.16862 of 2002 (O&M)

Executive Engineer, Siwani Canal Development Division, Bhiwani

...Petitioner

Vs.

Dharmbir & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Sandeep Thakan, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J. (ORAL)

1. The Presiding Officer, Industrial Tribunal -cum- Labour Court, Rohtak in the impugned Award dated 17.02.2002 has recorded the following findings on facts:

“7. In this case, the version of the workman is that he was appointed by the Management as Beldar in the month of April, 1976 and he worked upto 29.09.1990 as his service was terminated verbally by the Management on 30.09.1990. The version of the Management is that workman was appointed as Beldar on 01.12.1977 and service of the workman was terminated on 30.09.1980. There is no dispute that workman worked continuously from 01.12.1977 upto 30.09.1980 and he remained in service as Beldar. The workman when appeared in the witness box has categorically stated that he remained in service upto 29.09.1990 as his service was terminated on 30.09.1990 orally without notice and without payment of retrenchment compensation. Management could not adduce any oral or documentary evidence to prove that service of the workman was terminated on 30.09.1980. There is no reason to disbelieve the unrebutted statement of workman as WW-1. Management could not examine any

witness and could not adduce documentary evidence to rebut the statement of WW-1 Dharambir that he remained in service upto 29.09.1990. It was not possible for the workman to produce service record in Court because the service record was in the custody of the Management. It was the duty of the Management to produce service record of the workman in Court to make clarification regarding service period of the workman. The Management did not take any step to get the service book and other service record of the workman produced in Court. The workman made his earnest efforts to get the service record produced in Court. In this connection, workman filed application for production of service book, attendance register and payment register of the management regarding the period from April, 1976 upto 01.10.1990. In response to this application, N.K.Garg, SDE, Bhiwani appeared in Court and recorded his statement on 16.08.1995 stating that service book, attendance register and payment vouchers could not be traced in the office...”

2. The Labour Court in its discretion judicially exercised has relied upon the oral testimony of the workman and reposed trust in the deposition that the period of service spent was from April, 1976 to 01.10.1990. The story of the Management restricting employment till 1980 has been disbelieved in the absence of corroborative documentary evidence which it failed to produce. On the other hand, the workman made every effort to get documentary evidence produced before the Labour Court from the management through an application presented including on what is recorded in the quoted part of the Award from Para.7 thereof reproduced above in extract.

3. The Labour Court has held that the workman had completed 240 days of continuous and uninterrupted service prior to the date of his termination on 30.09.1990. It is also held that Section 25-F of the Industrial Disputes Act, 1947 (for short ‘the Act’) was violated as neither one month’s notice or wages in lieu thereof nor reasons for retrenchment supplied nor was

retrenchment compensation paid or handed over to the workman at the time of retrenchment. Not only was there violation of Section 25-F of the Act, but the Labour Court held on evidence that Section 25-G had also been violated as the principle of 'last come first go' was not followed. Many workmen were recruited after retrenching the services of the present workman – respondent No.1 and, therefore, he had a right to reinstatement even on the principle in Section 25-H. The rights under Section 25-G and H of the Act are equally mandatory as vigorously as the teeth of Section 25-F of the Act; *see - Harjinder Singh Vs. Punjab State Warehousing Corporation*, (2010) 3 SCC 192. If there was delay in raising the dispute after 3 years of termination, then the Labour Court has wisely reduced the back wages to 40% of the arrears while awarding reinstatement to the previous post with continuity of service and moulding the relief judiciously. I find no ground worthy of interference in this petition filed by the State of Haryana. There is no error apparent on the face of the record or any perversity of reasoning in arriving at the fair and just conclusions arrived at by the labour court. I would, therefore, dismiss this petition.

4. However, before parting with this order, I would be failing in my duty if I do not point out to the affidavit dated 02.03.2017 filed by Amrit Singh, Executive Engineer, Jui Water Services Division, Bhiwani in compliance of the interim order passed by this Court on 15.02.2017 to which my attention is drawn, that when the State was asked to confirm the statement of the learned counsel for the respondent – workman that despite stay of award, the services of the respondent have been continued by the Management, the answer in the affidavit in Para.6 is an admission that despite the stay orders on the award, the workman has been working as work-charge employee and it is only due to the pendency of this writ petition filed by the State of Haryana that

the case for regularization of the workman's services could not be considered so far. It is also recorded that the respondent – Beldar has been paid wages from 20.10.2000 to 31.01.2017 in the sum of ₹16,20,601/-.

5. This revelation changes the complexion of the case entirely in favour of the respondent – workman and against the State, which has acted in the most arbitrary and unfair manner in not processing the case of the workman for regularisation since similarly placed persons have been regularized including one Dalbir Singh son of Baje Singh in the year 1993. The State has taken undue advantage of the pendency of this petition filed by the State itself. This is reprehensible conduct which ill behoves the State. But for the chance interim order dated 15.02.2017, the hearing on this petition may have been delayed. The State did not think it fit to inform this Court all these intervening years since 2002 of the major supervening event that de facto the Award has been complied with and yet the petition was kept lingering on.

6. Thus, in addition to the other reliefs granted above by affirmation of the impugned award, this petition is dismissed with costs of ₹1,00,000/- to be paid to the respondent – workman within a period of two months from the date of receipt of certified copy of this order. The case of the respondent for regularisation is directed to be taken up and decided within the same time frame fixed for payment of costs. The State will be at liberty to recover costs from those whose duty was to apprise the Court of the changed circumstances flowing from reinstatement by the department itself despite the stay orders. Quite obviously those orders stand vacated.

15.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No