

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

Date of decision: 15.03.2017

CM Nos.3818-19 of 2017 in/and
CWP No.15633 of 1996

Uma Shankar

...Petitioner

Vs.

Presiding Officer, Labour Court, Chandigarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.S.Khaira, Advocate,
for the petitioner.

Mr. Harkesh Manuja and Mr. Raghav Goel, Advocates,
for respondents No.2 & 3.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.3818 of 2017

Exemption application is allowed as prayed for.

CM No.3819 of 2017

Application is allowed. Testimonies of MW-1 Jagdish Singh and
AW-1 Uma Shanker are taken on record.

CWP No.15633 of 1996

This petition has to be allowed in view of the orders passed in
CWP No.4505 of 1996 titled 'Jagdish Ram @ Jagdish Singh Vs. The Presiding
Officer, Labour Court, UT, Chandigarh' by learned Single Judge on
21.12.2005 invoking Articles 14 & 16 of the Constitution to quash an identical
Award pertaining to the same employer with identically placed workman
serving in the same Division before retrenchment. That judgment has attained

finality. Jagdish Ram and the present petitioner were two of 11 persons, who were retrenched by a common notice dated 04.04.1992. When these matters went for trial on references to the Labour Court, it gave rise to conflicting awards. In some of the cases, finding of the Labour Court was that the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') had been violated and, therefore, reinstatement was ordered while in the case of Jagdish Ram and the present petitioner, the same Labour Court observed that those provisions had not been violated, leading to different results. On facts, learned Single Judge noticed that the workmen after retrenchment were directed to collect retrenchment compensation on any working day. No further evidence was required to establish breach of Section 25-F of the Act since retrenchment and payment of compensation was not simultaneous.

When this case was filed, the petitioner in the Index had relied upon the then pending CWP No.4505 of 1996, which has gone in favour of the workman similarly placed, as the present petitioner. Therefore, the respondent – UT Administration would have no option, but to treat all alike.

Accordingly, the impugned Award dated 06.06.1996 has to be set aside. If the impugned Award is set aside, then the question of relief arises for which many factors will have to be taken into consideration in moulding relief. It appears well settled by a large number of judgments that reinstatement does not follow automatically where there has been breach of the mandatory procedure under the Industrial Disputes Act, 1947, for instance, by violation of Section 25-F. It is pointed out that the total service prior to retrenchment to the credit of the petitioner was about 5 years and 3 months. The services of the workman were terminated 25 years ago and he has not been in service since. It appears to my mind that reinstatement after 25 years may not be either

practical or prudent to disturb 3rd party rights in service under the State with many incidents of service occurring from time to time involving regularization, seniority, promotions etc.

So this can be an appropriate case of payment of compensation in lieu of reinstatement since one is dealing with a management which is the UT Administration, and therefore it would not be feasible as mooted a while back to ask Mr. Harkesh Manuja to seek instructions from UT Administration as to what the compensation package should be if reinstatement is denied even in the face of parity. Therefore, this Court has itself tried to balance the interests of both sides by awarding compensation to the tune of ₹6 lakhs remaining guided by the monetary dispensations handed down by the Supreme Court in BSNL Vs. Man Singh, (2012) 1 SCC 558, where the Supreme Court granted to each of the two workers ₹2 lakhs for less than two years of service. Even in Assistant Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh, (2013) 5 SCC 136, the Supreme Court awarded ₹50,000/- as compensation for 240 days of service. When these figures are multiplied by the number of years put in, I think it would not be inappropriate to award an amount of ₹6 lakhs to the petitioner. Nearer home is the view of Division Bench of our Court in Municipal Council, Dina Nagar Vs. Presiding Officer, Labour Court, Gurdaspur, (2015) 1 RSJ 765, where the rough rule of about ₹1,00,000/- to ₹1,25,000/- has been suggested as appropriate compensation for each year of completed service. Compensation packages are usually rough estimates of assessment on known legal parameters gained by experience from case law.

Keeping in view all these factors in mind, I would partly allow this petition by modifying the impugned award, deny reinstatement to the petitioner and award him instead a lump sum amount of ₹6 lakhs as just and

adequate compensation for over five years of service in lieu of reinstatement and back wages. The amount be paid to the workman – petitioner within a period of two months from the date of receipt of a certified copy of this order, either from this Court or from the petitioner, whichever is earlier.

15.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>