

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16288 of 1996

Date of Decision: 22.03.2017

The Executive Engineer, East Division,
Punjab State Electricity Board,
Jalandhar

... Petitioner

Versus

The Presiding Officer, Labour Court,
Jalandhar and others

... Respondents

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

Present: Mr. Vikas Chatrath, Advocate,
for the petitioner.

Mr. G.P. Vashisth, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

Heard Mr. Chatrath and Mr. Vashisth.

The Labour Court has faulted the termination by returning a finding that none of the witness examined by the management deposed that retrenchment compensation was sent or attempted to be sent to the workman by post on the last day of the notice period, to prove that he had refused to receive the same. On appreciating the evidence from this vantage point of view the Labour Court was correct in thinking that the retrenchment was not in accordance with law, i.e., it was in defiance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ("1947 Act"). It is well settled that retrenchment compensation has to be paid at the time of retrenchment which means that the offer must be contemporaneous with termination. Any gap could be fatal to the action. This is because the 1947 Act has been designed

to ensure compliance with the law and offer to workman retrenchment compensation to provide an immediate pocket money before he looks for a job elsewhere and rehabilitate his family. This is the philosophy of Section 25-F of the 1947 Act and the Courts have interpreted the provision to be mandatory without deviation.

Remarkably having reached this conclusion, the Labour Court should judicial restraint in awarding the relief. Retrenchment was offered and a direction issued that the workman should be reinstated in service but it was guarded with the words “until he is retrenched in due course of law”. The award was passed on February 15, 1996. If the management was serious enough and there was justification in ordering retrenchment since the reference was accepted by the Labour Court purely on a technical ground then it need not have filed a writ petition and instead followed the procedure established by law under conditions precedent to termination in Section 25-F of the 1947 Act. If it did not do so and kept litigating for the next 20 years then, I am afraid, no equitable consideration runs in favour of the management and that reinforces my belief that this petition is luxury litigation and deserves to be dismissed.

After all the monetary value of the award is only 1/3rd of the back wages and the workman has not disputed the award and has reconciled himself to the relief awarded but since this Court stayed the operation of the award by interim order dated October 18, 1996 the respondent has been out of service and has been deprived of benefits due under the award. This has caused serious injury to the workman's industrial rights.

The argument raised by Mr. Chatrath is that the relief should be denied to the workman as the period of service is too brief i.e. three years

and reinstatement is not automatic for which he cites law in Assistant Engineer, Rajasthan Dev. Corp. & Anr vs. Gitam Singh, 2013 STPL(Web) 84 SC.

However, at the same time he fails to notice the revival of the principle in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., (1979) 2 SCC 80 in a series of judgments delivered by the Apex Court in succession in 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 and including the Full Bench decision of this Court in Hari Palace, Ambala City vs. The Presiding Officer, Labour Court & another, ILR 1979 (P&H) 243 which is oft quoted in judgments of this Court in the passing years that the ordinary result of illegal and arbitrary termination is reinstatement as it will be deemed that the order was never passed and the workman continued in service. I see no departures from the normal rule in this case. In *Surwase* the Supreme Court held that in case of wrongful termination of service, reinstatement with continuity of service and back-wages is the normal rule.

In State of Uttar Pradesh v. Charan Singh, (2015) 8 SCC 150 the Supreme Court invoked *Olga Tellis* (1985) ruling in a labour matter to emphasize that right to life includes the right to livelihood. The respondent was deprived of such rights for decades spent in litigation sponsored by the Punjab State Electricity Board (PSPCL).

I have no valid and substantial reason to interfere with the judicial discretion exercised by the labour Court in crafting a well moulded award. The same leaves sufficient room to the management by its victory on 2/3rds of past wages even after the officers of the department acted in defiance of law and opted to litigate for which the petitioning department will have to be saddled with costs of ₹ 25,000/- in favour of the respondent to defray litigation expenses which must have been incurred by a hapless workman. While winding up the order I cannot help restating our valuable inheritance that in exercise of powers of judicial review under Article 226 of the Constitution of India, this Court would not interfere with the findings of fact based on evidence by embarking upon a reappraisal of the evidence to arrive at its own conclusion.

No merit. The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

22.03.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*