

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15029 of 1999
Date of decision: 02.05.2017

Sanjay Kumar

... Petitioner

vs.

Presiding Officer, Labour Court, Ambala & anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S.Longia, Advocate
for the petitioner.

Ms. Meenakshi Poswal, Advocate
for respondent No.2.

Rajiv Narain Raina, J.

1. Challenge in this writ petition is to the award dated 09.06.1999 passed by the Presiding Officer, Labour Court, Ambala declining claim for reinstatement and instead holding the workman entitled to compensation of ₹ 30,000/- in lieu of reinstatement.

2. The Labour Court has held the termination illegal with which finding I have no difference of opinion but at the same time reinstatement has been denied by accepting the plea of loss of confidence. There is no necessity to go in any detail of the many facts, both relevant and less relevant. However, the plea of loss of confidence has succeeded before the Labour Court on an inference drawn against the workman accusing him of tampering with the record of the society, which allegedly caused wrongful gain to the petitioner.

3. The brief facts necessary for a decision are that the petitioning workman was a clerk appointed to service in November, 1991. His services were placed under suspension in March, 1993 and he was served with a

charge sheet in November, 1993. The reply filed was not found satisfactory and the matter was inquired into. But regular inquiry was not held and termination was caused by a resolution of the society. He was charge sheeted for the misconduct of making cuttings in an earlier resolution enhancing his salary. He allegedly tampered with the resolution by a cutting so as to enhance his salary from ₹ 900/- to ₹ 1100/- per month. He was also accused of converting the figure of ₹ 1100/- to ₹ 1400/-. This was money which came to his pocket unduly. Therefore, the impugned resolution was passed on an opinion formed by the Sub Committee looking into his conduct that he was guilty of the charge. Since an inquiry was not held, and a request to conduct it before the labour Court was not made and the petitioner was removed from service as the management could no longer suffer him.

4. In such circumstances, reinstatement is not possible to consider. When this position is accepted as unexceptionable then the only question which survives for decision is whether compensation of ₹ 30,000/- is adequate means for illegal termination as certified by the labour court by returning findings of fact. The management counsel says that ₹ 30,000/- meant a lot of money in 1999 and any further enhancement would not be called for.

5. Mr. Longia submits that in case reinstatement is to be denied then compensation should be just and adequate for loss of future employment in a Cooperative Society. I would agree with the contention of Mr. Longia and reject that of the management. The amount is too paltry even for 1999 compared to loss of livelihood and occupation. The alleged cuttings have not been proved by evidence and enquiry. Suspicion cannot

take the place of proof. But loss of confidence of management can be based on serious suspicion and ex-employee not forced upon the unwilling management to remain a festering wound disturbing peace and harmony for which the Industrial Disputes Act is designed to restore in industry. Reinstatement in the circumstances would be counterproductive. The idea should be dropped and focus diverted to relief.

6. The period of service under employment is from 02.11.1991 to 27.02.1994, which is about 2 years and 3 months. What is adequate compensation is always a complex issue and the task becomes even more difficult with the passage of time. This petition is pending since 1999. The rights of the parties are to be declared when the litigation begins and with the passing years, the value of money decreases. To reach a just figure of compensation which is reasonable and adequate many factors have to be considered and kept in mind.

7. Such as, the length of service spent, the length of service left before retirement, the character of the post, the method of recruitment and, whether the job is pensionable or not, whether replacement has been made on the post by a satisfactory arrangement, whether post is single or multiple cadre, whether employer is public or private, whether fault in termination is technical or substantive etc. The reason for termination or retrenchment would also be germane to the decision. The number of years spent in litigation is ordinarily irrelevant. Cases have to be decided and relief granted by a constant adjustment of claim to money in relation to current price index.

8. Keeping in view the above standpoints, I am unable to persuade myself to believe that ₹ 30,000/- in 1999 was just and adequate

compensation even in those days as against the finding of illegal termination by the adjudicator. Normally, an illegal termination is accompanied by all consequential benefits unless there are reasons necessitating departure from the rule, since the law by deeming fiction provides as though the order was never passed and the person continued in service.

9. That valuable right to adequate compensation has being denied to the petitioner by awarding low amount pegged on an observation of loss of confidence in the workman, which discretion on evidence once exercised by the labour court judiciously is not open to review in the writ proceedings. There is no doubt that a plea of loss of confidence is such a plea which can be taken even for the first time in a superior court even though it was not pleaded in the Court of first instance. When these variable factors are kept in view, I would support payment of lump sum compensation in the region of ₹ 2 lakhs for two years and 3 months of service spent in this case by the respondent society, in addition to the awarded amount.

10. On all these wide parameters and while keeping in view the compensation model awarded by the Supreme Court in **BSNL v. Man Singh, (2012) 1 SCC 558** in a sum of ₹ 2 lakhs for a little under 2 years of service. Guided likewise, the compensation in the instant case deserves to be enhanced by ₹ 2 lakhs plus the amount of ₹ 30,000/- awarded by the labour Court.

11. Learned counsel for the respondent states that ₹ 30,000/- stands deposited with the labour Court and has been disbursed to the workman, since stay was not granted by this Court.

12. For the reasons recorded above, this writ petition is partly allowed. The labour court has refused reinstatement for good and sufficient

reasons but the meagre award is modified as far as compensation in lieu of restoration is concerned. The petitioner is held entitled to ₹ 2 lakhs in addition thereto ₹ 30,000/- lying deposited with the labour Court. The amount I believe will serve the ends of justice.

13. The amount of ₹ 2 lakhs are directed to be paid within a period of three months from the date of receipt of certified copy of the order and the labour Court is directed to release ₹ 30,000/- in favour of the workman whenever petitioner approaches the Court through an application.

14. In case the amount of ₹ 30,000/- was deposited by the management by way of cheque or draft and not encashed by drawee it shall be got revalidated from the Bank. In case the amount sits in a Bank, the same shall be released to the petitioner with interest accrued thereon as and when applied for by the petitioner. In case of default in payment of ₹ 2 lakhs within the time frame fixed in paragraph 13 above, the amount will carry interest @ 12% per annum till payment.

02.05.2017
sonia

(RAJIV NARAIN RAINA)
JUDGE

1. Whether speaking/non-speaking?
2. Whether reportable?

Yes
No