

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1794 of 2014

Date of Decision: 15.05.2017

Mohan Singh

... Petitioner

Versus

Presiding Officer, Industrial Tribunal,
Patiala and others

... Respondents

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

Present: Mr. Amrik Singh, Advocate,
for the petitioner.

Mr. Ashok Aneja, Advocate,
for respondents No.2 & 3.

Mr. H.K. Aurora, Advocate,
for respondent No.4.

RAJIV NARAIN RAINA, J.

1. When a Labour Court in a reference made to it comes to the conclusion on evidence the termination was illegal and in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ("1947 Act") and denies reinstatement but awards compensation of a paltry amount of ₹15,000/- as compensation in lieu of reinstatement deserves not to be congratulated. I have in the course of this roster, come across several such awards passed by the Presiding Officer, Industrial Tribunal, Patiala awarding paltry amounts in the year 2013 all of which have added to the dockets of this Court since notice of motion has had to be issued in order to do justice. Worse still is awarding such a low amount for the period of employment without assigning valid reasons even for the price index in the year 2013 then dispensation handed down to delinquent is shockingly

disproportionate and unreasonable or what may be considered to a trained mind as just and adequate compensation in lieu of reinstatement. There can be no doubt that the award has to be set aside *ex facie* without entering into any long debate. Therefore, I have restricted the arguments to the quantum of compensation and how much should be adequate and reasonable in the facts and circumstances by keeping intact the denial of reinstatement.

2. A few facts of the case would be in order to narrate, for measuring the right quantum doze. The admitted position on file is that the ex employee served as Laboratory Assistant in Shivalik Model School, Naya Nangal, District Ropar from February 01, 1996 till February 28, 2006 when his services were illegally terminated by the respondents. No charge-sheet, notice, inquiry or compensation was paid at the time of termination. Juniors to the petitioner were retained in service on the same post. Fresh hands also came into service. Trouble began for the petitioner when he claimed regularization of his services in early 2004. This demand precipitated the adverse action ultimately ending in termination.

3. The management before the industrial Tribunal set up the defence that petitioner was paid from Parents Teacher Association Funds. His services were not terminated but he left on his own accord for which he obtained from the School an experience certificate. The petitioner was paid at that time ₹1200 per month which was less than the rates of minimum wages fixed by the Government of Punjab for scheduled employments of the kind the petitioner held.

4. It is noteworthy that the petitioner had during employment approached the authority under the Minimum Wages Act, 1948-cum-

Assistant Labour Commissioner, Mohali, camp at Ropar for payment of minimum wages. The application was allowed. The respondents, including the Municipal Council, Nangal were held severely and jointly responsible to pay to the applicant an amount of ₹7864.15 towards difference of minimum wages paid and payable under the Minimum Wages Act, 1948 (“1948 Act”) in addition, an amount of ₹2135.85 was also awarded. The order passed under the 1948 Act attained finality.

5. However, the workman was dissatisfied with the amount awarded and moved the Tribunal at Patiala by presenting an application under Section 33-C (2) of the Industrial Disputes Act, 1947 (“1947 Act”) on September 26, 2007 in application No.228 of 2007 which was decided on December 06, 2013. The application was allowed and the respondent-School was directed to make payment of difference of wages from February 1996 to August 2005. The order under Section 20 (2) of the 1948 Act had restricted the claim for a period of six months from the date of filing application.

6. Against the order dated December 06, 2013 the petitioner-School preferred CWP No.15141 of 2016 assailing the order dated December 06, 2013. Since the order dated December 06, 2013 was neither mentioned nor annexed in the present writ petition I called for the record of that writ petition to gain firsthand knowledge of the contents of the writ petition. That petition was dismissed by this Court on August 01, 2016. One of the contentions raised by the school before the Labour Court was that there is no relationship between the petitioner and the workman seeking relief before the forum. This Court referred to the reasons given by the Labour

Court in para.13 and reproduced them in the order. The Court was of the view that the finding given by the authority under the 1948 Act had attained finality since the same was not challenged by the petitioner. Once they had accepted the order passed by the authority, no case for interference was made out. The petition was dismissed in *limini*.

7. The order was appealed in LPA No.2351 of 2016. Simply because the argument was that there was no employment relationship of the school and the workman, the Bench did not agree since the argument was ruled out by the Single Judge. Alternatively, it was argued by the management that even if the plea is accepted, even then the respondent would not come within the definition of workman as contemplated under the 1947 Act only because he was held to be an employee in proceedings under the 1948 Act. This argument did not cut any ice before the Appellate Bench for the reason that the 1947 Act is a special act conferring special rights on workman to access Court for the whole relief which was restricted by the authority under the 1948 Act to six months due to prescriptions in the Act. The Bench observed that the plea that there was no relationship of employer and employee between the appellant-School and respondent No.2 was a “dishonest plea”. It was declared that respondent No.2 was an employee of the appellant-School. Faced with this situation, the learned counsel for the school prayed for permission to withdraw the appeal by undertaking that the entire dues would be cleared. The appeal was dismissed as withdrawn.

8. Parallel to the proceedings under Section 33-C (2) of the 1947 Act to claim arrears of wages at DC rates over a period of 10 years the respondent had secured a reference under Section 10 (1) (C) of the 1947 Act

when the Deputy Labour Commissioner, Punjab exercising powers of the appropriate Government referred the dispute as to termination of services of workman Mohan Singh (petitioner) vide order dated January 19, 2006. The reference has resulted in the award dated May 21, 2013. The Labour Court has denied reinstatement after recording a finding that the termination on February 28, 2006 was illegal when passed in violation of the provisions of Section 25-F of the 1947 Act. Instead of awarding reinstatement and back wages the Labour Court has partially allowed the reference by awarding a meager sum of ₹15,000/- as compensation in lieu of other relief. It is against the award dated May 21, 2013 that the present petition has been filed assailing the award. It may be noticed that the award under Section 10 (1) (c) was made on May 21, 2013 while the order under Section 33-C (2) was pronounced on December 06, 2013. The same has been upheld in appeal while affirming the judgment of the learned Single Judge dated August 01, 2016.

9. I have heard the learned counsel for the parties at some length and have perused the record as also the file of CWP No.15141 of 2016.

10. The only argument raised in the petition worth noticing advanced by the respondents in defence of the writ petition is based on concealment of what it thinks is the most important document i.e. the experience certificate dated January 18, 2000. The petitioner is accused of withholding it in the petition. From the certificate Ex.W1 it is argued that the workman was employed on temporary basis from Parents Teacher Association. The Principal of the school has certified that the workman had immaculate record of sincerity to the institution; he was diligent in work and devoted to

duty combined with good nature, humour and unfaltering skill in maintaining discipline with students which were the hallmarks of his personality. He was certified fit to be a very good Laboratory Assistant. While respondents No.2 & 3 (School) accused the petitioner of concealment of the experience certificate, they conveniently forget that the Labour Court has dealt with this certificate in para.15 of the award. If the certificate was issued in the year 2000 then the employment continued up to February 28, 2006 and I too am at loss to understand how then did the experience certificate suggest that he had left the job on his own in order to obtain an experience certificate to look for other jobs. The weight of evidence on record suggests to the contrary by the sheer fact that after issuance of the experience certificate the petitioner continued to work for more than six years in the capacity of a Laboratory Assistant.

11. It is next argued that wages, if any, were paid at fixed rate from PTA funds, therefore, there is no relationship of employment directly with the management. I have considered this aspect and I fail to see how does it matter regarding the source from where wages are paid. If the petitioner was paid as per the Constitution approving and adopting the Parents Teacher Association of Shivalik Model School in the proceedings of the ordinary meeting held on August 22, 1991 then the work was actually performed full time as a Laboratory Assistant for the benefit of the school. Whether the petitioner was paid directly or through the PTA funds is not important. The question still remains that the termination was illegal when brought about in flagrant breach of Section 25-F of the 1947 Act. Even the Labour Court has returned a finding that the termination was illegal and the respondents have

not preferred a writ petition against that finding which has attained finality. To top it all, the school agreed to implement the orders passed in the application under Section 33-C (2) of the 1947 Act and withdrew their appeal raising fixed payment of ₹1000 per month to the wages prescribed for the scheduled employment under the 1948 Act. Accordingly, ten years of arrears had been promised to be paid before the Appellate Bench of this Court.

12. Still further, the management had unsuccessfully argued before the Appellate Bench in LPA No.2351 of 2016 that there was no relationship of employer and employee. The Appellate Bench recorded the following finding in its order:-

“The learned Single Judge noticed that in earlier proceedings under the Minimum Wages Act this question was determined and the appellant never questioned that finding under the Minimum Wages Act. Therefore, the plea raised before the learned Single Judge about the relationship of the appellant with the workman was negated outrightly.

Learned counsel for the appellant contends that even if this plea is accepted, the respondent No.2 would not come within the definition of 'workman' as contemplated under the Industrial Disputes Act, 1947 and simply because he was held to be an employee under the Minimum Wages Act would make no difference to this issue for the Industrial Disputes Act and the respondent No.2 will have to bring his case within the distinct definition of this special Act.

After hearing the learned counsel for the appellant in this regard, we find that no such plea was raised before the learned Single Judge. The only plea raised was that there was no relationship of employer and employee between the appellant and respondent No.2, which on the face of it can be termed to be a dishonest plea. The respondent No.2 was clearly held to be an employee of the appellant. In this

situation the appellant could hardly have raised a sustainable plea of there being no relationship between the appellant and respondent No.2 of an employer and employee.”

13. The plea has been held to be dishonest. No premium can be put on a dishonest plea taken in Court. The management would have to contend with a finding that the management of the school and the workman, the present petitioner, were in a direct employment status. The Labour Court has more or less returned such a finding in the impugned award. The Labour Court has recorded that the school failed to lead any evidence on the issue and the evidence of the workman has remained unchallenged and unrebutted by the school confirming that he served for ten years and his services were terminated without notice, notice pay or payment of retrenchment compensation. I have no reason to upset that finding and would endorse it.

14. It is next urged by the respondent that this is not a fit case for reinstatement with full back wages. In case the Court comes to this view then it should apply the law in Haryana State Electronics Development Corporation Ltd. v. Mamni, 2006 (2) SCT 647 since reinstatement is not automatic or awarded as a matter of right. There can be no doubt on the proposition of law that reinstatement is not automatic but still payment of ₹15000 compensation in lieu of reinstatement as awarded by the Labour Court would amount to perpetuating gross injustice and a miscarriage of justice.

15. If the *Mamni* case was to be followed, then compensation pattern should have been at least the same. In *Mamni* the Supreme Court awarded ₹25,000/- as compensation but the Labour Court reduced that figure by ₹10,000/- whereas there was sufficient case law on the date of award to

have applied the rulings in Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana), (2010) 5 Supreme Court Cases 497; Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192; Devinder Singh vs. Municipal Council, Sanaur, (2011) 6 SCC 584 and the case that has followed in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors, (2013) 10 SCC 324; and Jasmer Singh vs. State of Haryana and another, (2015) 4 SCC 458, Tapash Kumar Paul vs. BSNL & ors., 2014(3) SCT 106. As the matter is taken up for the present in a petition filed in 2014 the previous precedents were available for the guidance of the Labour Court.

16. I find no justification for payment of such a lowly compensation as awarded. It therefore requires reference to the reasoning in paragraph 17 of the impugned award and the same deserves to be reproduced for ready understanding and which contains the sum total of the reasoning on the relief based part:-

"In the light of the above discussion, it is held that workman Mohan Singh is not entitled to relief of reinstatement with back wages. Taking into consideration the fact that the services of workman were terminated in violation of the provisions of Section 25-F of the I.D.A. 1947 and that he worked with respondents No.1 and 2 for about 10 years and that this reference remained pending for about 5 years, interests of justice shall be served if compensation worth Rs.15000/- (Rupees fifteen thousand only) is directed to be paid to the workman by the Respondents No.1 and 2. As the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this Court by the Appropriate Government for adjudication, the reference is maintainable. Accordingly, issues No. 1 is

answered in favour of the workman and against the respondents No. 1 and 2 and Issue No. 2 is answered against the respondents and in favour of the workman.”

17. Going by Municipal Council, Dina Nagar vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (1) RSJ 765 a compensation if awarded and reinstatement denied should have been in the region of ₹1 lakh per year making a total of ₹10 lakhs. The cost benefit analysis would suggest that justice may be served if the award is set aside and reinstatement with 50% back wages is awarded together with continuity of service. Keeping the law in mind there is no second alternative in the face of findings recorded by the authority under the 1948 Act, the Labour Court in proceedings under Section 33-C (2), in CWP No.15141 of 2016 and the order passed in LPA No.2351 of 2016.

18. There is, however, a third alternative, which variable to relief appeals to my mind while keeping in the foreground what was argued before me by both sides and the observations made during the course of the hearing by keeping in mind long period of about a decade flowing by since the termination in 2006 and further keeping in view the fact that the engagement was from funds of the Parent-Teacher Association then the ends of justice would be served if reinstatement is denied and compensation in lieu thereof is awarded in a sum of ₹5 lakh. This would be in addition to ₹1.45 lakh available to the workman as a result of dismissal of LPA No.2351 o 2016 on May 10, 2017 and the undertaking given before the Appellate Bench that the entire dues of the workman would be cleared within a period of six weeks as per orders passed under Section 33-C (2) of the 1947 Act. I am told at the hearing that the respondent school is a

municipality run Model School which can jointly and severally shoulder the burden of the order of payment of compensation.

19. Accordingly, the petition is partly allowed. The award of the Labour Court is set aside by modification. Reinstatement is denied and instead an amount of ₹5 lakh is ordered to be paid to the petitioner by the management as lump sum compensation for illegal termination.

(RAJIV NARAIN RAINA)
JUDGE

15.05.2017
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Whether speaking/reasoned *Yes*

Whether reportable *Yes*