

CM No.14554 of 2016 in/and
CWP No.6783 of 2010

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

Date of decision: 22.02.2017

CM No.14554 of 2016 in/and
CWP No.6783 of 2010

Ansar Ahmad

...Petitioner

Vs.

M/s Crew B.O.S. Products Private Limited & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashwani Bakshi, Advocate, for the petitioner.

Mr. Mohak Bhadana, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J.

CM No.14554 of 2016

Having heard learned counsel for the parties, the application for early hearing is allowed and the main writ petition is taken up for final disposal today itself by consent.

CWP No.6783 of 2010

The Labour Court was correct in reaching the conclusion that the termination was wrongful and illegal. Having reached this conclusion, the Labour Court examined a large number of cases guiding Labour Courts on the parameters of how relief is to be moulded in industrial adjudication. The net result of the cumulative reading of the judgments noticed by the Labour Court in its award would be that the discretion remains in the Labour Court whether to award the back-wages in full or in part assuming on principle that reinstatement does not follow illegal termination automatically. There is no doubt on the proposition of law enunciated in the

judgments relied upon of the Supreme Court and High Courts, namely, Allahabad Jal Sansthan Vs. Daya Shankar Rai, 2005 LLR 534 (SC); General Manager, Haryana Roadways Vs. Rudhan Singh, 2005 LLR 849 (SC); U.P.S.R.T.C. Ltd. Vs. Sarada Prasad Misra, 2006 LLR 586 (SC); U.P.S.R.T.C.Ltd. Vs. Mitthu Singh, 2006 LLR 1062; Divisional Controller, G.S.R.T.C. Vs. Kadarbhai J. Suthar, 2007 LLR 401; Haryana Urban Development Authority Vs. Om Pal, 2007 LLR 582 & All India Institute of Medical Sciences Vs. Raj Singh & others, 2007 LLR 852 (Delhi High Court). The award was passed on 08.12.2009.

2. However, a reading of the law laid down in recent past indicates the transforming judicial attitude to the problem by the Supreme Court in a flurry of judgments delivered in Jagbir Singh Vs. Haryana State Agriculture Marketing Board & another, (2009) 15 SCC 327; Ramesh Kumar Vs. State of Haryana, (2010) 2 SCC 543; Harjinder Singh Vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192; Anoop Sharma Vs. Executive Engineer Public Health Division No.-1, Panipat (Haryana), (2010) 5 SCC 497; Deepak Aggarwal Vs. State of U.P., (2011) 6 SCT 725; Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others, (2013) 10 SCC 324 [holding: “In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule”]; Raghubir Singh Vs. General Manager, Haryana Roadways Hisar, (2014) 10 SCC 301; State of U.P. Vs. Charan Singh, (2015) 2 SCT 597; Jasmer Singh Vs. State of Haryana & another, (2015) 4 SCC 458 & Tapash Kumar Paul Vs. BSNL & another, AIR 2015 SC 357, shows a visible shift in the thinking of the Supreme Court in recent times, which judicial though dates back to M/s Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. & others, (1979) 2 SCC

80. No accurate statement of law can be made on the subject nor is it advisable to wear a strait jacket since each case has to be decided on its own facts and in the light of the evidence adduced and taking into consideration the many factors which will go into the decision making. The Court has to balance out the equities in each case, whether to award reinstatement and deny wages altogether or to deny wages or grant reinstatement with full back-wages or less or to make do with other permutations and combinations as are found just and expedient in deciding the case.

3. The Presiding Officer, Labour Court-II, Gurgaon in the impugned award dated 08.12.2009 challenged by Ansar Ahmad has denied reinstatement and held the workman entitled to an amount of ₹50,000/- as lump sum compensation in lieu of reinstatement and in default of payment, the management would be liable to pay interest @ 6% per annum till realization. The reasoning to deny reinstatement and back-wages full or in part and grant a meager sum of ₹50,000/- for documented service of six years adopted by the Labour Court is best read in words of the Labour Court contained in Paras.25 to 27 of the Award, which reads as follows:

“25. Hence, the latest stand is that instead of awarding reinstatement with full back wages, the Court should award lump sum amount as compensation, thereby, keeping in view the relevant facts and circumstances of each case.

26. Now, coming to the facts of the present case, it is pointed out that in the claim statement the workman has claimed reinstatement with back wages without asserting that he is unemployed since the date of his illegal termination. Furthermore, no cogent evidence has also been placed on file on this aspect. Hence, the workman has failed to discharge the onus which was placed on him to prove that he was no gainfully employed. Further, the fact cannot be lost sight that he was appointed on 01.02.1990 and served the respondent for only upto 11.02.1996. There is no doubt that he has rendered

continuous service of more than 240 days. It is the admitted fact of the parties that the services of the workman were engaged as Helper with the respondent. Thereby keeping in view all the relevant facts and circumstances of this case, I am of the considered opinion that the end of justice shall meet if the workman is held entitled to be consolidated sum of ₹50,000/- as compensation.

27. As per my above discussion, I have no hesitation in holding that the services of the workman were wrongly and illegally terminated by the respondent. However, the workman is not entitled for reinstatement of his services. But instead the workman shall be entitled to a sum of ₹50,000/- in lump sum to be paid by respondent/Management within three months from the date of passing of this award and in case of default of payment, the workman shall be entitled to claim interest on this amount @ 6% per annum till the payment. Hence, issues No.1 and 2 are decided in favour of the workman and against the management.”

4. Reinstatement and back-wages have been denied for the reasons summarized by paraphrasing from the extract of the award as follows:

- “(i) In the claim statement, Ansar Ahmad did not assert that he is unemployed since the date of illegal termination. The statement of claim was filed in April, 2001. There was no cogent evidence on the above.
- (ii) The workman has failed to discharge onus, which was placed on him to prove that he was not gainfully employed.
- (iii) The period of service was from 01.02.1990 and 11.02.1996, which the Labour Court thought was short.”

5. On these views expressed by the Labour Court, the award was passed, but with the categorical finding that the termination was illegal.

6. As far as onus is concerned, it appears that the objection was not taken by the management on whom the burden was to assert that the workman was in gainful employment during the period of forced idleness compelled by illegal termination. If the management did not object on this score, then I think that the Labour Court fell in error in placing onus on the workman. Moreover, the period of service for six years is substantial and does not qualify as brief period not to consider reinstatement and rule it out of consideration. May be if the award was passed today, it would have taken different shape in view of law noticed in Para.2 above, which has changed the texture and complexion of awarding relief in labour law returning to the sparkling principle in *M/s Hindustan Tin Works Pvt. Ltd.* case that when all things are equal, illegal termination must bring with it relief as though the termination order was not passed and the workman continued in service, which he would deemed to by the legal fiction and therefore the natural consequences would follow.

7. Reinstatement has two parts i.e. return to service while the other continuity to be attached. This aspect also requires thoughtful consideration by the Labour Court, which exercise has not been done. Therefore, it appears to me that the reasons ascribed in denying relief and restricting it to payment of only ₹50,000/- lump sum is not sound and wise exercise of discretion and slants heavily in favour of the management, who have got almost scot-free by their own wrongful actions in retrenching the workman for no fault and cogent reason sustainable in law. Generalizations based on case law are not enough to dispense justice, only the ratio and principles are binding and there are no definitive principles to be followed except the precious rule of thumb gained by judicial experience and the total impact of the case printed on the judicial mind. This is a tricky part of labour

jurisprudence, which vexes the Court time and again grappling with what relief is fair and just in case to case. In cases where workmen do not have protection by Articles 14 & 16 of the Constitution as in private industry, the standards required for public posts can be of no use on point of relief of reinstatement and monetary restitutions.

8. The management has to pay costs of its error and disregard paid to the mandatory statutory provisions in the Industrial Disputes Act, 1947 and especially Section 25 F. Even by applying the Full Bench decision of this Court in Hari Palace, Ambala City Vs. The Presiding Officer, Labour Court, Ambala and another, (1979) 81 P.L.R. 720, which is tried and tested, the first reflex of the Labour Court should be to award entire relief and then subtract from it what it thinks just and fair to take away in its discretion judicially exercised from the ordinary rule that reinstatement and back-wages follow illegal termination.

9. This is one aspect of the discretion posited in the labour court regarding reinstatement and back-wages. The next difficulty arises as in this case is to the quantum of lump-sum compensation in lieu of reinstatement which I am afraid to say is terribly low almost adding insult to injury. The management has got away with payment of ₹50,000/- and is obviously very satisfied with the dispensation. Even by applying the standards in past precedents relating to award of compensation, the amount is meager. If, we apply rough rules as to quantum in BSNL Vs. Man Singh, (2012) 1 SCC 558 (₹2 lakhs for less than two years of service) compensation should be more in the region of about ₹1 lakh for every year of completed service, which would bring ₹6 lakhs as compensation to Ansar Ahmed, if reinstatement is to be denied on legal and valid grounds.

10. On facts, the petitioner was a Helper appointed by the management on 01.02.1990 and his services were terminated by violating the law in Section 25-F of the Act. At that time his salary was ₹1550/- p.m. If the management had regard for the law in Section 25-F of the Act, then it would have cost it a pittance to honour the statutory provisions by paying fifteen days average wages for every completed year of service but they honoured them in breach. Adopting the statutory criteria would lead to payment of ₹4650/- + one month of salary in lieu of notice, making it total ₹6200/-. As against the statutory price of ₹6200/-, the management can be visited with full back-wages not only for the period of service, but till the date of award i.e. 09.12.2009, which would bring at static rates (without catering for rise in minimum wages fixed for Helpers from time to time) a sum of ₹1550/- p.m. x 6 years for the period of service i.e. ₹1,11,600/- and ₹1550/- p.m. from 10.02.1996 to 08.12.2009 i.e. ₹2,41,800. For both the periods, the total comes to ₹3,53,400/- which represents loss of actual earnings not to talk of minimum wage revision from 1996 to 2009 and loss of use of money when it was most needed. When this figure is juxtaposed with ₹50,000/-, the result is startling and disturbs the conscience of the Court. This cannot be accepted as far and just.

11. Recently in *Tapash Kumar Paul's* case (supra), the Supreme Court has read right to livelihood into right to life guaranteed by Article 21 of the Constitution. The figures mentioned above are cold logic and without meaning of life and the loss occasioned to the workman recurrently apart from loss of work, which has to be compensated and remedied apart from refunding the litigation expenses, he may have incurred all these years right up to prosecuting this petition. It would be a travesty of justice to tell the workman that the award is sustained and he can take ₹50,000/- and go home.

Therefore, in the dispensation apart from the other factors required to be considered in the discretion of the Court in moulding relief, the principle of statutory tort comes in which carries special price of restitution and amelioration for wrongs committed by the employer and certified by the labour court holding the termination illegal. A handle cannot be given to the management to defeat the law with impunity. Statutory tort carries heavy price tag and therefore, I have no hesitation in setting aside the Award. The award fails to do justice according to law. It is not only lopsided it is one sided and is not sustainable.

12. As a result of the above discussion, the writ petition is allowed. The petitioner is reinstated to service with full back-wages with consequential continuity of service and original status is restored. He will not only be entitled to arrears of wages last drawn at the time of illegal termination, but would have the right to successive adjustments in minimum wages prescribed from time to time for the post of Helper by the Deputy Commissioner of the District concerned, where the cause of action accrued, the dispute arose and the respondent resides and does business. The amount be determined and paid to the workman within a period of three months from the date of receipt of this order, failing which it will carry interest @ 9% per annum till realization.

13. Note: Reinstatement immediately may not be possible in view of the respondent Company being in winding up. A winding up order has been passed on 14.03.2014 and this fact has been brought to my notice by the counsel for the respondent Management. A Company Petition No.52/2013 is pending in the High Court of Delhi. It may be noted that Sick Industrial Companies (Special Provisions) Act, 1985 has been repealed by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (Act

No.1 of 2004) published on 01.01.2004 notified on 01.12.2016. Effect of this repeal in Company Petition No.52/2013 is not known. The only indication I have on it being brought to my notice by handing over in court is order dated 25.10.2016 passed by the Company Judge in the Delhi High Court, which reads as follows:

“Mr. Mayank Goel, learned counsel appearing on behalf of the Official Liquidator/applicant seeks leave to withdraw the present application, in view of the circumstance that a reference has been filed by the company (in Liqn.) under Section 51 of the Sick Industrial Companies (Special Provisions) Act, 1985 before the BIFR, which is pending adjudication.

The Official Liquidator seeks liberty to approach the BIFR with an appropriate application, in accordance with law.

Leave and liberty granted.

The present application is dismissed as withdrawn and disposed of accordingly.”

14. In case, the respondent company is in winding up, then reinstatement may have to be kept in abeyance till the end of the proceedings before the designated authority, but the monetary value of this order will remain a debt against the respondent company with the priority and charge attached to wages in Section 530 of the Companies Act, 1956 or its equivalent provision in the amended Act. Office to send copy of this order to the Official Liquidators attached to this Court as well as Delhi High Court for notice and necessary action for the present and future. Parties may also bring this order to the notice of the learned Company Judge of the Delhi High Court.

22.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
No