

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

Date of decision: 17.04.2017

CWP No.26840 of 2013

Balwinder Kumar

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Patiala
& another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Raj Kaushik, Advocate, for the petitioner.

Mr. Arvind Moudgil, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner served as Guest House Attendant with the Sports Authority of India for 8 years. His services were done away with, with effect from 12.09.2006 without notice or charge-sheet or enquiry or payment of retrenchment compensation. Against illegal termination, the workman raised a dispute with the management, which came to be registered before the Presiding Officer, Industrial Tribunal, Patiala as Ref. No.60/2007.

The defence of the Sports Authority of India was one of complete denial of employment relationship. Management asserted that he was not their employee and no salary had been paid by Sports Authority of India to him. The written statement filed by the management before the Industrial Tribunal, if believed to be true, could put an end to the matter against the petitioner due to total denial of the case. The Management has also filed a written statement in the writ proceedings accusing the petitioner of “*Suppressio veri, expressio falsi*” [A suppression of truth is equivalent to

a lie] since the petitioner has withheld the fact that he was employed through a Labour Agency named 'Ex-Serviceman Security Services' with an office running at Shop No.5, Leela Bhawan Market, Patiala. A copy of Tender Job Contract for skilled / un-skilled labourers issued to Lt. Col. Parminder Singh, Director, Ex-Serviceman Security Services by the Sports Authority of India dated 29.08.2003 has been placed at Annex R-2/1 for the first time. They have attached a letter dated 10.03.2004 offering jobs on contract basis to Lt. Col. Parminder Singh of which one of the areas covered is for the watch and ward of New Guest House of the SAI. The period of contract is from 03.03.2004 to 30.04.2004 carrying the remarks that minimum one person is to be deployed for the work. No other contract even before or thereafter has been shown or placed on record of the labour court or in the instant petition. Apart from the fact that such evidence cannot be entertained for the first time in writ proceedings, which have not been set up as defence by the management before the Industrial Tribunal, the fact remains that there was evidence of MW-1 Avinash Kumar, LDC, in the respondent – authority, who in his affidavit by way of examination-in-chief has struck to the stand that the petitioner was never employed by the management nor any salary ever paid to him. When subjected to cross-examination, which the Industrial Tribunal called an important piece of evidence to establish; whether the workman was working for the management or not, admitted as correct that respondent – management has its own Guest House. He admitted that the workman/claimant was working in the Guest House of the respondent – management. [This was crucial turning point from the adamant denial mode adopted in the pleadings]. Witness volunteered that petitioner Balwinder Kumar had come through a Labour Agency, but he failed to disclose the name of the Agency. MW-1 admitted as correct that Mark-F is the cheque

issued by his department parting in favour of the workman a sum of ₹1732/-. The cheque is dated 31.03.2006. Management had put money into the account of Balwinder Kumar through cheque which was issued by R.C.Trivedi, Drawing & Disbursing Officer, SAI NS NIS, Patiala. Mark-D was another document indicating that the stand of the management was false. This document was signed by one K.K.Gudiala, P.A. to R.D. by which Balwinder Kumar, Guest House Attendant was sent to Delhi to deliver some important documents to ED (Teams) for onward transmission to the Ministry at New Delhi.

Employment through Labour Agency was ruled out by the Industrial Tribunal on finding sufficient evidence to connect the management with Balwinder Kumar for a long period from 1988 to 2006. The Tribunal concluded that this evidence is sufficient to prove that no middleman was employed by the management to run the Guest House and the workman was on the rolls of the management. Once the connection was established, then the law would follow in Section 25-F of the Industrial Disputes Act, 1947, as compliance was not done. There was violation of Section 25-F and therefore, the termination was illegal.

Having reached thus far, the Tribunal diverted itself to believe that even if there is non-compliance of the provisions of Section 25-F of the Act that although may lead to the grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, but the same would not mean that such relief is to be granted automatically or as a matter of course. The Tribunal applied the law in Haryana State Electronics Development Corporation Ltd. Vs. Mamni, 2006 (2) LLJ 744 (SC) and drew the relief model from that case to award only ₹5000/- as

compensation In lieu of reinstatement and not even ₹25,000/- granted in that case, if the relief model had to be followed.

Accordingly, the reference in short shrift was answered in favour of the workman and against the management. What the petitioner got was virtually nothing and that too without adequate reasoning. I am constrained to say a line of reasoning is pathetic in an Industrial Tribunal and to understand the shallow thinking Paras.12 to 15 deserves to be reproduced and read. The same are as follows:

“12. However, non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 although may lead to the grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would not mean that such relief is to be granted automatically or as a matter of course, as has been held by the Hon’ble Supreme Court in Haryana State Electronics Development Corporation Ltd. Vs. Mamni, 2006 (2) LLJ Page 744 (SC). In this case, Hon’ble Supreme Court modified the impugned award by directing that the workman shall be compensated by payment of Rs.25,000/- instead of order of reinstatement with back wages.

13. Balwinder Kumar was not the regular employee of the respondent department. Proper procedure was not followed while giving him employment. Such type of ad-hoc/temporary appointments being contrary to the provisions of Article 14 and 16 of the Constitution, are illegal, as has been held by the Hon’ble Supreme Court in Secretary, State of Karnataka Vs. Uma Devi & other, 2006 (2) LLJ Page 722 (SC). Even, otherwise, in the instant case, the services of the workman were terminated in 2006 and period of 7 years has already lapsed.

14. In the light of the above discussion, it is held that workman Balwinder Singh is not entitled to relief of reinstatement with back wages. Taking into consideration the

fact that the service of the workman were terminated in violation of the provisions of Section 25-F of the I.D.A., 1947 and that he worked with the respondent for 8 years and at the time of termination of his services, he was drawing Rs.2370/- p.m. and that this reference remained pending for about 8 years, interest of justice shall be served if compensation worth Rs.5000/- (Rupees Five Thousand Only) is directed to be paid to the workman by the respondent. Accordingly, issue No.1 is answered in favour of the workman and against the respondents.

RELIEF

15. In the light of my finding regarding above noted issues, this reference is hereby answered in favour of the workman and against the respondent and the respondent is directed to compensate the workman with Rs.5000/- (Rupees Five Thousand Only) within 45 days of the publication of the award, failing which the workman will be entitled to the awarded amount along with interest @ 6% p.a. from the date of passing of the award till realization. File be consigned to the record room.”

Section 25-F of the Act is held to be violated; 8 years of continuous service stands established; the termination is held to be illegal; stands proved that there was no middleman involved and the relationship was direct; Balwinder Kumar was drawing ₹2370/- p.m. for 8 long years and the Industrial Tribunal still thought that justice shall be served if ₹5000/- is awarded as compensation in lieu of reinstatement. If this is justice, then the Judicial Officer has no business to sit in a Labour Court/Industrial Tribunal. The Award was passed on 10.10.2013 and the Judicial Officer remained ignorant of flurry of judgments available for her reading when the award was made, delivered by the Supreme Court 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”. While she applied the law of the Supreme Court in *Uma Devi*’s case to non-suit the workman, she completely failed to notice or deal with the judgment in Maharashtra State Road Transport Corporation & another Vs. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556, explaining in categorical terms that in so far as Industrial and Labour Courts are concerned, they enjoy wide powers under the Industrial Disputes Act to take affirmative action. The Supreme Court has further clarified in *Casteribe* that decision in *Uma Devi* limits the scope of powers of Supreme Court under Article 32 and High Courts under Article 226 of the Constitution to issue directions for regularization in the matter of public employment, but power to take affirmative action under labour legislation rests with the Industrial Tribunals and Labour Courts, and remains intact.

Thus, I am sorry to express my displeasure at the work presented by the then Presiding Officer, Industrial Tribunal, Patiala in dispensing with justice in the matter of grant of relief. The labour court has completely misapplied the law to the facts determined by itself against the respondent management and in favour of the workman. I would out rightly reject the unconscionable and unethical stand taken by the management in its written statement filed through CM Nos.7574-CWP & 7575-CWP of 2016 and would nullify the award to the extent indicated below for the reasons above; and still further, for the simple reason that the management has not

challenged the award and the findings against it are final. I guess they would have had good reason to gloat at their victory not to have filed a writ against the award as they got away cheaply at a small cost of ₹5000/-, whether there was a middleman or not. The middleman theory introduced in the written statement presented to this Court is rubbished as it was not taken before the labour court and cannot be taken in writ proceedings for the first time. Even a small whisper in the testimony of the MW is not enough as there was no pleading to support it. What is not pleaded cannot be allowed to be proved by evidence.

Consequently, so far as the relief part is concerned in the award the same is so fundamentally erroneous, flawed and perverse that it has to be quashed as illegal. I would, therefore preserve the findings of fact which are in favour of the workman while moulding the relief part, and grant reinstatement to the petitioner with full back wages and continuity of service because a false stand was taken before the Tribunal by the respondent management and was disbelieved by the Tribunal and thus that part is maintained, and therefore no equitable considerations can fall to the respondent.

As a result, the petition is allowed. The award is partly quashed as outlined above.

17.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>