

Principal of Government College, Badli,
Tehsil Bahadurgarh, District Jhajjar

...Petitioner

Vs.

Ramesh Kumar & another

...Respondents

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

Present: Mr. R.T. Redhu, DAG, Haryana.

None for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

Reply to the application has been filed in Court. The same is taken on record. Perused.

It is revealed therein that an amount of ₹ 1,75,932/- has been released on January 19, 2016 vide contingency bill No.127 dated January 13, 2016 in favour of respondent No.1-Ramesh Kumar towards 50% of the back wages as per award of the Tribunal dated August 11, 2014. The award stands implemented qua back wages. However, the issue of reinstatement is to be debated as identified in the interim order dated August 12, 2015.

No one appears for the respondents despite notice. On listing the case and when called on for hearing, counsel fails to appear and pass-over is also not sought. The Court proceeds to make a final order, for which, it would be necessary to reproduce the interim order dated August 12, 2015 passed by me, which reads as follows:-

“The moot question before the Labour Court was whether the workman had completed 240 days of

continuous service in the previous 12 calendar months from the date of the termination. The Labour Court has taken the view that the foundational fact has been established and the respondent-workman had served for more than 240 days. But the State insists in this petition that the workman had not completed 240 days of service. On a closer scrutiny of the evidence and particularly the affidavit filed by Dr. S.N. Sharma, Associate Professor, Government College, Badli (Jhajjar) (P-4) found at page 31 of the paper book filed before the Labour Court clearly depicts that the workman put in 240 days during the relevant period. A detailed chart has been reproduced in para.2 of the affidavit which conclusively shows the picture in favour of the workman. The finding of the Labour Court on the point of continuous service as defined under section 25-B stands affirmed and is not open to further debate in this petition which argument is foreclosed.

However, Mr. Bedi submits that the total period of service is brief comes to no more than 2 years and 17 days as a daily wager and, therefore, the Labour Court was not justified in awarding reinstatement. In support, he relies inter alia on the decision of the Supreme Court in Assistant Engineer, Rajasthan Development Corporation vs. Gitam Singh, [2013] 5 SCC 136 that discretion in this case was not exercised properly by the Labour Court in awarding reinstatement which cannot be granted automatically without there being anything more to justify relief.

Notice of motion to R-1 returnable by 15.10.2015.

Service of R-2 is dispensed with.

Pending writ petition, there will be a stay on reinstatement but not the back wages.”

The respondent-workman worked on a public post in a Government College rendering 2 years and 17 days of service as a daily wage employee, which brief period of employment would not justify reinstatement by any standards. ₹ 1.75 lakhs and odd paid by the State without Court intervention would to my mind be the appropriate compensation for 2 years of service in lieu of reinstatement. The State has also produced photographs and asserted that the workman runs a hosiery shop selling readymade garments at Badli, District Jhajjar. Therefore, his assertion in his application under Section 17-B of the Industrial Disputes Act, 1947 that he is a married person facing hardship and he has no other source of income to provide for his family members who are fully dependent on the wages drawn by him when he worked in their college is not a truthful statement of affidavit. The statement made in the counter affidavit contesting the application under Section 17-B informing of respondent running a shop though may not qualify as gainful employment in an establishment which requires employer-employee relationship but by all means it is a source of livelihood which calling has not been disclosed in the affidavit. To that extent, Mr. R.T. Redhu, appearing for the State is right that the affidavit in support of the application contains false utterances and, therefore, the same cannot be relied upon. I tend to agree while sitting in equity jurisdiction.

In view of the above, the petition deserves to be allowed qua reinstatement while accepting the statement of Mr. Redhu that it has been rendered infructuous by act of employer relenting to pay 50% back wages as

awarded by the Labour Court in implementation of the award. It may be noticed that while reinstatement was stayed, the back wages awarded were not stayed by this Court.

However, since in the reply it is disclosed that a contingency bill has been prepared then a direction is issued to the petitioner to pay the amount to the respondent-workman within two months from the date of receipt of copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

23.05.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>