

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

Date of decision: 16.03.2017

CWP No.25273 of 2015 (O&M)

Krishan Kumar

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25291 of 2015

Dilbag

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25311 of 2015

Sanjay

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25301 of 2015

Ravi

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25718 of 2015

Ranbir

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25720 of 2015

Smt. Sunita

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25724 of 2015

Sanjay

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25733 of 2015

Raj Kumar

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25795 of 2015

Sunny

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CWP No.25796 of 2015

Smt. Balwanti

.... Petitioner

Vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ajay Chaudhary, Advocate
for the petitioner(s).

Mr. Saurabh Girdhar, AAG, Haryana.

RAJIV NARAIN RAINA, J.(ORAL)

This order will dispose of this batch of 10 writ petitions as the same question of law is involved in them, which can be conveniently dealt with by a common order as reference to facts is not necessary for decision.

This is for the reason that the State has not filed writ petitions challenging the awards and has on the other hand implemented them by reinstating the petitioner(s) in service. In each of these cases, the Labour Court has declared termination illegal and void on account of breach of the three mandatory provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is a rather rare case to find where the labour Court awards relief based on a confluence of the three cardinal protections afforded to workmen by the Act against the management.

The impugned awards passed by the Industrial Tribunal-cum-Labour Court, Hisar were of even date i.e. 22.09.2014 whereby reinstatement has been granted with continuity of service but back wages stand denied. The labour Court has denied back wages for the reasons that the workmen are not entitled for back wages as they had not worked during the period intervening from retrenchment and reinstatement and secondly, they were employed on temporary basis. In one sentence as it were a valuable claim to money has been discarded without due application of

mind or having regard to the facts as are necessary for grant of back wages. The illegal termination took place in the year 2013. By wrongful actions of the department the workers were left idle and without work depending on the result of litigation. Their livelihoods were taken away. If the reason for denial of back wages are sustained on the reasoning adopted then I am afraid in all cases to right to back wages should be denied and if it were allowed, it will create a bad precedent. Had the labour Court denied back wages on account of proof of gainful employment elsewhere or where there was inordinate delay in raising an industrial dispute and things like that it may have been a different matter. The second reason for denying back wages that the workmen were serving on temporary basis is wholly fallacious and deserves to be rejected. The Industrial Disputes Act makes no distinction between types of employment ranging from part-time to regular.

A reading of the award discloses that the labour Court was conscious that at the time of appointment the names of the petitioners were sponsored by the Employment Exchange and therefore, their appointments could not be said to be without the colour of law. The petitioners had worked for the periods ascribed. The petitioner in CWP No.25273 of 2015 had worked from 01.02.2010 to 21.06.2013 and in other cases the dates are about the same which are not necessary to tabulate or incorporate in this order and would be read *mutatis mutandis*.

The reasons for denial of back wages, in the considered view of this Court is unsustainable in law and fact and per se contrary to the law settled long ago by the Full Bench of this Court in ***Hari Palace, Ambala***

City v. The Presiding Officer, Labour Court & anr., (1979) 2 ILR (Punjab) 243 that when the termination is declared illegal, full back wages follow as though the illegal order was not passed and the workmen deemed to have continued in service. Back wages would follow, unless there are reasons necessitating departure from the general rule. The Full Bench had relied upon the decision of Supreme Court then recently delivered in celebrated case *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., (1979) 2 SCC, 80* where the principle was first thrashed out in cases where termination was held to be illegal by a labour court then the judicial reflex is to restore arrears of back wages withheld as though order was not passed and the workman had continued in service and therefore, by the fiction of law required to be compensated, exceptions apart.

If the fault squarely lies in the department then it owes duty and an obligation to pay workmen their just dues in terms of arrears of full back wages. The view expounded in *Hindustan Tin Works* case (supra) was vigorously reiterated by the Supreme Court in a string of cases including in *Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192, Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana), (2010) 5 Supreme Court Cases 497, Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors, (2013) 10 SCC 324; and Tapash Kumar Paul v. BSNL & ors., 2014(3) SCT 106 (SC),* and I would respectfully follow the dictum in these cases when irrelevant considerations have crept into the decision making process

in denying altogether back wages.

For the foregoing reasons, I find sufficient merit in the contention of the learned counsel for the petitioner(s) and lack of it in the defence of State and feel persuaded enough to allow these writ petitions. As a result, the impugned award(s) are modified and the petitioner(s) are held entitled to full back wages. The amount be determined and paid to the workers within a period of three months from the date of receipt of certified copy of this order, either from the Court or from the petitioner, whichever is earlier. The petitioner(s) is/are also held entitled to interest @ 6% per annum on the arrears, which amount will be included at the time payment of back wages. An affidavit of compliance of this order and proof of payment of sums determined be furnished to this court in the disposed of matter within six months for the perusal of the Court.

(RAJIV NARAIN RAINA)
JUDGE

16.03.2017
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| 1. Whether speaking/non-speaking? | Yes |
| 2. Whether reportable/non-reportable? | No |