

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4660 of 2017

Date of Decision: 15.05.2017

Executive Engineer, Irrigation Department
and others

... Petitioners

Versus

Mohinder Singh and another

... Respondents

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

Present: Mr. Vishal Garg, Addl. AG, Haryana.

Mr. Sandeep Goyal, Advocate,
for respondent No.1.

RAJIV NARAIN RAINA, J.

1. The department is in writ filed under Articles 226/227 assailing the award of the Labour Court made on October 27, 2016. The Labour Court has accepted the claim and directed the petitioner to reinstate the respondent-workman with continuity of service and 50% of the back wages. It has also ordered that arrears of back wages if not paid within two months will carry interest @9% per annum. The relief granted by the Labour Court appears to me far too excessive for a Mate/Beldar in the Irrigation Department, for the brief period of service rendered from December 01, 1986 to September 30, 1987.

2. Earlier, the workman had approached this Court by way of CWP No.7992 of 1987 claiming regularization in the halcyon days before the pronouncement of State of Haryana and others v. Piara Singh and others,

AIR 1992 SC 2130 arising from a division bench order of this Court granting relief of regularization on completion of 240 days of service. In those proceedings one Sh. Lehna Singh, Junior Engineer under mistaken identity made statement before the High Court that the services of Mohinder Singh (the present respondent) have been regularized. The person who was regularized w.e.f. April 01, 1993 was in fact one Mohinder Singh s/o Raghubir Singh but not the present workman who is Mohinder Singh s/o Man Singh. The statement was inadvertently made and was far from truth. On the statement, the petition was rendered infructuous. No further proceedings appeared to have been taken thereafter till the workman filed another CWP No.17079 of 2007 which was disposed of on November 06, 2007 by a direction to pass a speaking order on the claim. Speaking order was passed bringing to light the truth that there was a mistake committed on wrong identity. The claim was dismissed. A contempt petition was filed which was disposed of with liberty to the workman to approach the Labour Court. This is how the matter has reached this Court.

3. The defence before the Labour Court was on mistaken identity and the period of service was far too brief from 1986 to 1987 with intermittent periods of work which were under execution at that time. On completion of work the services of the workman were terminated. He was a daily wager. Nothing has been placed on record to show that any replication was filed by the workman refuting the stand of the department that it was not he but some other person whose services had been regularized. Therefore, the statement of the department before the Labour Court has to be accepted as true.

4. The Labour Court has needlessly entered into the philosophy of labour law which have no bearing on the facts of the case. It has not dealt with the real issues involved on facts and their effect on relief and that too granted in such large measure as appears ex facie a reward and windfall for total 285 days of service spent or thereabout.

5. It may be noticed that the dispute was raised for the first time on June 01, 2010 by serving demand notice for justice. The reason given by the workman for the inordinate delay was that he had filed a miscellaneous application in CWP No.7992 of 1987 which remained pending and was decided on February 02, 2010 vide Ex.W-4. The order passed on February 02, 2010 records that the petitioner seeks to withdraw the petition with liberty to approach the Labour Court. The petition was dismissed as withdrawn with liberty to take appropriate remedy available under the law.

6. This demand notice was rejected by the Labour Commissioner and reference was refused which brought the workman in CWP No.9965 of 2014. On receiving notice from the High Court, the Labour Commissioner withdrew his order and referred the dispute to the Labour Court, Ambala. Accordingly, the writ petition was disposed of as infructuous.

7. The question which falls for consideration is whether the Labour Court was justified in awarding reinstatement with continuity of service for 285 days worked on daily wages in the Construction Division No.9. Award of relief to this extent appears to me to be wholly unjustified and not judicious dispensation of justice ordering reinstatement in a department of Government where the money will be paid by the Government from public money, even if it is taken that there has been

violation of Section 25-F of the Industrial Disputes Act, 1947 (“1947 Act”).

8. Award of 50% of the back wages has not been quantified and the Labour Court has awarded it blindly from 1987 running over three decades and that too without assigning any reason to justify the sum payable or what it may add up to. The judgments of the Supreme Court and this Court relied upon by the Labour Court are torn out of context with the facts of this case. These appear to me to be the handy work of cut, copy and paste. Objections not even taken by the department nor raised by the workman have found themselves for answer in the award. No one took an objection whether the Irrigation Department was an industry and yet the Labour Court in para.15 has put words in the mouth of the Government pleader who is said to have stated that the Irrigation Department is not an industry. An objection not taken in writing cannot be heard or entered upon and I seriously wonder whether the Government pleader actually put forth such an argument or is this also cut, copy and paste.

9. There was not even the necessity to go into the question of whether the Irrigation Department is an industry but yet the Labour Court has planted a judgment in support that it is an industry. The question of limitation, delay and laches has been dealt with on case law but not on facts. Similar is the situation with meaningless discussion on Section 25-B (2) of the 1947 Act. The man had served admittedly only for 285 days so where was the need to dilate or discuss on this aspect when it was not relevant to the case. Labour Court should have known that reinstatement is not automatic and many relevant factors deserve to be considered before embarking on relief which in this case does not deserve to be granted

including continuity of service or full back wages. This does not mean that no relief whatsoever should be granted for admitted breach of law rendering the termination illegal. He must have some compensation for wrongful retrenchment.

10. Having heard Mr. Vishal Garg, Addl. AG, Haryana and Mr. Sandeep Goyal, learned counsel for respondent No.1, I am of the considered opinion that the award is not sustainable and deserves to be set aside and accordingly it is modified to payment of Rs.1 lac as compensation in lieu of other relief awarded so generously, which sum would in my view represent just, reasonable and adequate compensation for the initial violation of the provisions of Section 25-F of the 1947 Act. The amount be paid to the respondent within three months when the order is made available.

11. As a result, this appeal is partially allowed as above.

(RAJIV NARAIN RAINA)
JUDGE

15.05.2017

manju

Whether speaking/reasoned Yes

Whether reportable No